

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF TEXAS

3 MARSHALL DIVISION

4 INTELLECTUAL VENTURES I LLC,)(

5 PLAINTIFF)(CIVIL ACTION NO.

6 VS.)(2:17-CV-577-JRG

7)(MARSHALL, TEXAS

8 T-MOBILE USA, INC., T-MOBILE)(

9 US, INC., ERICSSON INC., AND)(

10 TELEFONAKTIEBOLAGET LM)(

11 ERICSSON,)(FEBRUARY 8, 2019

12 DEFENDANTS)(8:30 A.M.

13 TRANSCRIPT OF JURY TRIAL

14 BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

15 UNITED STATES CHIEF DISTRICT JUDGE

16 APPEARANCES:

17 FOR THE PLAINTIFF: Mr. T. John Ward, Jr.
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18 Ms. Andrea L. Fair
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25 (Proceedings recorded by mechanical stenography, transcript
produced on a CAT system.)

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1 (Jury out.)

2 COURT SECURITY OFFICER: All rise.

3 THE COURT: Be seated, please.

4 All right. Are counsel for the parties prepared to
5 read into the record the items from the list of pre-admitted
6 exhibits used during yesterday's portion of the trial?

7 MS. HENRY: Yes, Your Honor. Plaintiff has no
8 exhibits to read into the record this morning.

9 THE COURT: How about Defendant?

10 MS. SMITH: Yes, Your Honor. DX-3, DX-95, DX-395,
11 DX-405, DX-481, DX-482, DX-485, DX-492, DX-520, DX-529,
12 DX-533, DX-572, DX-573, DX-574, DX-576, DX-577, and PTX-331.

13 THE COURT: Is there any objection from the
14 Plaintiff as to that offer by the Defendants?

15 MS. HENRY: No, Your Honor.

16 THE COURT: All right. Thank you, counsel.

17 Let me say this before I bring in the jury and
18 proceed to begin my final jury instructions.

19 The Court considers its final instructions to the
20 jury and counsel's closing arguments as the most serious
21 part of a very serious process. Therefore, I'm going to
22 insist that there be no movement, no distractions.

23 Certainly, I don't want any electronic devices to
24 go off. I don't want people passing papers, whispering,
25 getting up and leaving the room. If you need to do anything

1 or take care of anything of that nature, do it now before I
2 bring the jury in, because once I bring the jury in, I want
3 as much as is possible everyone to be silent, attentive, and
4 respectful.

5 All right. Is Plaintiff or Defendant aware of
6 anything else that the Court should consider or take up
7 before I bring in the jury and begin my final jury
8 instructions?

9 MR. WARD: Nothing from the Plaintiff.

10 MR. KUBEHL: Nothing from the Defendant.

11 THE COURT: All right. Mr. Johnston, please bring
12 in the jury.

13 COURT SECURITY OFFICER: All rise.

14 (Jury in.)

15 THE COURT: Good morning, ladies and gentlemen.
16 Please be seated.

17 Ladies and gentlemen of the jury, you've now heard
18 the evidence in this case, and I'll now instruct you on the
19 law that you must apply.

20 I want you to understand that each of you are going
21 to have your own personal written copy of these instructions
22 that I'm now giving you.

23 You'll have those so that you can take them with
24 you to the jury room and refer to them if you choose to.

25 Accordingly, there's no pressing need for you to

1 make notes at this time unless you just want to. I'd prefer
2 you listen and pay direct attention to the instructions I'm
3 going to give you orally at this time.

4 It's your duty to follow the law as I give it to
5 you. On the other hand, as I've said previously, you, the
6 jury, are the sole judges of the facts in this case.

7 Do not consider any statement that I have made in
8 the course of the trial or may make in these instructions as
9 an indication that I have any opinion about the facts of the
10 case.

11 You're about to hear closing arguments from the
12 attorneys. Statements and arguments of the attorneys are
13 not evidence, and they are not instructions on the law.
14 They're intended only to assist the jury in understanding
15 the evidence and the parties' contentions.

16 A verdict form has been prepared for you. You'll
17 take this form to the jury room during your deliberations,
18 and when you've reached a unanimous agreement as to your
19 verdict, you'll have your foreperson fill in the blanks
20 reflecting those unanimous agreements, date it, sign it, and
21 then notify the Court Security Officer.

22 Answer the questions in the verdict form from the
23 facts as you find them to be. Do not decide who you think
24 should win the case and then answer the questions to reach
25 that a result. Again, ladies and gentlemen, your answers

1 and your verdict must be unanimous.

2 In determining whether any fact has been proven in
3 this case, you may, unless otherwise instructed, consider
4 the testimony of all the witnesses, regardless of who called
5 them, and all the exhibits that were admitted and received
6 into evidence, regardless of who produced or introduced
7 them, as well as any stipulations or agreements the parties
8 may have reached in the case.

9 As I've said, you, the jury, are the sole judges of
10 the credibility of all the witnesses and the weight and
11 effect to give to all of the evidence.

12 Now, by allowing testimony or evidence to be
13 introduced over the objection of an attorney, the Court did
14 not indicate any opinion as to the weight or effect of that
15 evidence.

16 As I've said, the attorneys in this case are
17 advocates for their competing parties, their competing
18 clients, and they have a duty to object when they believe
19 evidence has been offered that should not be admitted under
20 the rules of the Court.

21 Now, when the Court sustained an objection to a
22 question addressed to a witness, you must disregard the
23 question entirely, and you may draw no inference about its
24 wording or speculate about what the witness would have said
25 if the Court had allowed them to answer the question.

1 However, if an objection was overruled, then you
2 must treat the answer and the question just as if you would
3 treat any other question and answer where no objection was
4 made.

5 Now, at times during the course of the trial, it's
6 been necessary for the Court to talk with the lawyers here
7 at the bench or by calling a recess and talking to them when
8 you were outside of the courtroom.

9 This happens because during a trial, there are
10 occasionally things that come up that do not directly affect
11 the jury.

12 You should not speculate, ladies and gentlemen,
13 about what was said during such discussions that took place
14 outside of your presence.

15 There are two types of evidence that you may
16 consider in properly finding the truth as to the facts in
17 this case.

18 One is direct evidence, which is direct proof of a
19 fact, such as the testimony of an eyewitness about what the
20 witness personally saw or heard or did.

21 The other is indirect or circumstantial evidence,
22 that is, the proof of a chain of circumstances that
23 indicates the existence or non-existence of certain other
24 facts.

25 As a general rule, the law makes no distinction

1 between direct or circumstantial evidence but simply
2 requires that you find the facts based on the evidence
3 presented during the trial, both direct and circumstantial.

4 It's for you to decide how much weight to give to
5 any and all of the evidence in this case.

6 Now, ladies and gentlemen, from time to time during
7 the trial, you may have seen documents that included
8 redactions in them.

9 Those documents were redacted by the agreement of
10 the Plaintiff and the Defendants, and you are not to
11 consider those redactions as an indication that a party is
12 trying to hide anything from you. You should not guess or
13 speculate what has been redacted or blacked out in any
14 document.

15 The parties may have stipulated or agreed to some
16 facts in the case. And when the lawyers for both sides
17 stipulate as to the existence of a fact, you must, unless
18 otherwise instructed, accept the stipulation as evidence and
19 regard the facts as proven.

20 Now, certain testimony over the course of the trial
21 has been presented to you in the form of a deposition.

22 A deposition is the sworn recorded answers to
23 questions asked of a witness in advance of the trial. If a
24 witness can't be present to testify in person, then the
25 witness's testimony -- testimony may be presented under oath

1 in the form of a deposition.

2 Before the trial, attorneys representing both sides
3 questioned these deposition witnesses under oath. A court
4 reporter was present, and the questions and the answers were
5 recorded and taken down.

6 Deposition testimony is entitled to the same
7 consideration as testimony given by a witness in person from
8 the witness stand.

9 Accordingly, you should determine the credibility
10 and the importance of deposition testimony to the best of
11 your ability just as if the witness had testified in person.

12 As I instructed you earlier, in this case one
13 witness testified by both deposition and by live testimony.
14 That is not typical, but it was done by the agreement of the
15 parties.

16 Now, while you should consider only the evidence in
17 this case, you are, ladies and gentlemen, permitted to draw
18 such reasonable inferences from the testimony and the
19 exhibits as you feel are justified in the light of common
20 experience.

21 In other words, you may make deductions and reach
22 conclusions that reason and common sense lead you to draw
23 from the facts that have been established by the testimony
24 and the evidence in this case.

25 However, you should not base your decision on any

1 evidence not presented by the parties during the course of
2 the trial, including your own personal experiences with any
3 particular cellular telecommunications provider or
4 equipment.

5 In deciding the facts in this case, you may have to
6 decide which testimony to believe and which testimony not to
7 believe. You alone are to determine the questions of
8 credibility or truthfulness regarding the witnesses.

9 In weighing the testimony of the witnesses, you may
10 consider the witness's manner and demeanor on the witness
11 stand, any feelings or interest in the case, or any
12 prejudice or bias about the case that he or she may have,
13 and the consistency or inconsistency of his or her testimony
14 considered in the light of the circumstances.

15 Has a witness been contradicted by other credible
16 evidence? Has he or she made statements at other times or
17 in other places contrary to those made on the witness stand?
18 You must give the testimony of each witness the credibility
19 that you think it deserves.

20 Now, even though a witness may be a party to the
21 action and interested in its outcome, that testimony may be
22 accepted if it's not contradicted by direct evidence or by
23 any inference that may be drawn from the evidence if you
24 believe that testimony.

25 Now, unless I instruct you otherwise, and as I've

1 told you, you may properly determine the testimony of a
2 single witness may be sufficient to prove any fact, even if
3 a greater number of witnesses may have testified to the
4 contrary, if after considering all the other evidence you
5 believe that the burden of proof has been met by that single
6 witness's testimony.

7 Now, when knowledge of a technical subject matter
8 may be helpful to the jury, a person who has special
9 training and experience in that technical field -- we call
10 them an expert witness -- is permitted to state his or her
11 opinions on those technical matters.

12 However, you're not required to accept those
13 opinions. As with any other witness, ladies and gentlemen,
14 it is solely up to you to decide whether or not to rely upon
15 it.

16 Expert witnesses presented by one party to the
17 litigation must have been disclosed as an expert to the
18 other parties and must have served on the other parties in
19 advance a written disclosure containing his or her opinions
20 that would then be presented at trial.

21 However, an expert witness does not include a
22 witness who offers testimony as to the witness's personal
23 knowledge but who does not offer opinions as an expert.

24 Witnesses of that type are generally referred to as
25 fact witnesses.

1 Now, certain exhibits shown to you over the course
2 of the trial were illustrations. We call these types of
3 exhibits demonstrative exhibits or sometimes simply
4 demonstratives. Demonstrative exhibit -- demonstrative
5 exhibits are a party's description, picture, or model to
6 describe something involved in the trial.

7 If your recollection of the evidence differs from
8 the demonstratives that you have been shown, you should rely
9 on your recollection of the evidence.

10 Demonstrative exhibits are sometimes called jury
11 aids. Demonstrative exhibits, ladies and gentlemen, are not
12 evidence, but a witness's testimony concerning a
13 demonstrative is evidence.

14 Additionally, the following are not evidence, and
15 you must not consider them as evidence in deciding the facts
16 in this case. Statements, arguments, questions, or
17 objections of the attorneys or anything you may see or hear
18 when the Court is not in session, even if what you see or
19 hear is done or said by one of the parties, one of the
20 witnesses, or one of the attorneys.

21 Now, in any legal action, facts must be proven by a
22 required amount of evidence known as the burden of proof.

23 The burden of proof in this case is on the
24 Plaintiff for some issues and on the Defendants for other
25 issues.

1 There are two burdens of proof that you, the jury,
2 must apply in this case.

3 One is the preponderance of the evidence, and the
4 other is clear and convincing evidence.

5 The Plaintiff in this case, Intellectual Ventures,
6 which you've heard referred to simply as IV throughout the
7 trial, has the burden of proving patent infringement by a
8 preponderance of the evidence.

9 The Plaintiff, IV, also has the burden of proving
10 damages for patent infringement by a preponderance of the
11 evidence.

12 A preponderance of the evidence means evidence that
13 persuades you that a claim is more probably true than not
14 true. Sometimes this is talked about as being the greater
15 weight and degree of credible testimony.

16 The Defendants in this case, Ericsson and T-Mobile,
17 have the burden of proving patent invalidity by clear and
18 convincing evidence.

19 Clear and convincing evidence means evidence that
20 produces in your mind an abiding conviction that the truth
21 of the parties' factual contentions are highly probable.

22 Although proof to an absolute certainty is not
23 required, the clear and convincing evidence standard
24 requires a greater degree of persuasion than is necessary
25 for the preponderance of the evidence standard.

1 If proof establishes in your mind an abiding
2 conviction in the truth of the matter, then the clear and
3 convincing evidence standard has been met.

4 Now, these standards are different from what you've
5 heard about in criminal proceedings where a fact has to be
6 proven beyond a reasonable doubt.

7 On a scale, ladies and gentlemen, of these various
8 standards or burdens of proof, as you move on one end from
9 preponderance of the evidence where proof need only tip the
10 scales in favor of the party who's proving a fact to beyond
11 a reasonable doubt on the other end of the scale where facts
12 must be proven to a very high degree of certainty, you may
13 think of clear and convincing evidence as being somewhere
14 between those two standards.

15 Now, in determining whether any fact has been
16 proven by a preponderance of the evidence or by clear and
17 convincing evidence, you may, unless otherwise instructed,
18 consider the stipulations of the parties, the testimony of
19 all the witnesses, regardless of who called them, and the
20 exhibits received and admitted into evidence by the Court,
21 regardless of who introduced them.

22 Now, as I did at the start of the case, I'll first
23 give you a summary of each side's contentions. I'll then
24 provide you with detailed instructions on what each side
25 must prove to win on each of its contentions.

1 As I've previously told you, this case concerns
2 three United States patents.

3 They are United States Patent 6,628,629, which
4 you've heard referred to throughout the trial as the '629
5 patent.

6 Second, United States Patent No. 7,412,517, which
7 you've heard to referred to as the '517 patent.

8 And thirdly, United States Patent RE46,206, which
9 you've heard referred to throughout the trial as the '206
10 patent.

11 I will refer to these three patents collectively as
12 the patents-in-suit or as the asserted patents.

13 Now, the Plaintiff, IV, seeks money damages from
14 the Defendants, Ericsson and T-Mobile, for the use of base
15 stations in T-Mobile's network. I'll refer to those base
16 stations in T-Mobile's networks -- network as the accused
17 technology.

18 Now, the Plaintiff contends that the accused
19 technology infringes the following claims of the asserted
20 patents.

21 Claims 1 and 4 of the '629 patent.

22 Claims 1 and 4 of the '517 patent.

23 And Claims 109, 112, 118, 140, 144, and 146 of the
24 '206 patent.

25 All of these claims are sometimes referred to as

1 the asserted claims.

2 Now, the Plaintiff, IV, has alleged that the
3 accused technology infringes the asserted claims either
4 literally or through the Doctrine of Equivalents.

5 IV seeks a reasonable royalty from the Defendants,
6 Ericsson and T-Mobile, regarding their alleged infringement.

7 Ericsson and T-Mobile deny that they infringe any
8 of the asserted claims, either literally or through the
9 Doctrine of Equivalents.

10 Ericsson and T-Mobile also contend that all of the
11 asserted claims are invalid.

12 Ericsson and T-Mobile contend that certain of the
13 asserted claims are anticipated by prior art that existed
14 before the Plaintiff's alleged inventions, and, therefore,
15 those asserted claims are invalid.

16 Ericsson and T-Mobile further contend that all of
17 the asserted claims are obvious in view of prior art that
18 existed before Plaintiff's alleged inventions, and,
19 therefore, all the asserted claims are invalid.

20 Ericsson and T-Mobile deny that they owe IV any
21 damages.

22 Invalidity, ladies and gentlemen, is a defense to
23 infringement. Invalidity and infringement are separate and
24 distinct issues.

25 Your job is to decide whether any of the asserted

1 claims have been infringed and whether any of the asserted
2 claims are invalid.

3 If you decide that any of the asserted claims have
4 been infringed and are also not invalid, then you'll need to
5 further decide the amount of money damages to be awarded to
6 the Plaintiff as compensation for that infringement.

7 Now, before you can decide many of the issues in
8 this case, you'll need to understand the role of patent
9 claims.

10 The patent claims are those numbered sentences at
11 the ends of each patent.

12 The claims are important because it's the words of
13 the claims themselves that define what a patent covers.

14 The figures and the text in the rest of the patent
15 provide a description or examples of the invention, and they
16 provide a context for the claims, but it is the claims
17 themselves, ladies and gentlemen, that define the breadth of
18 the patent's coverage.

19 Each claim is effectively treated as if it were a
20 separate patent, and each claim may cover more or cover less
21 than another claim.

22 Therefore, what a patent covers collectively
23 depends on what each of its claims covers.

24 Claims may describe methods for using technology.
25 And I will call such claims method claims. In this case,

1 the Plaintiff, IV, has asserted only method claims.

2 You need first to understand what each claim covers
3 in order to decide whether or not there is infringement of
4 the claim and to decide whether or not the claim is invalid.

5 The first step is to understand the meaning of the
6 words used in the patent claim.

7 Now, the law says that it is my role to define the
8 terms of the claims, and it's your role to apply my
9 definitions or constructions to the issues that you're asked
10 to decide.

11 Therefore, as I told you at the beginning of the
12 case, I have determined the meanings of certain claim
13 limitations, and I've provided those definitions to you, and
14 they're listed in your juror notebooks.

15 You must accept those definitions that I've
16 provided of these words in the claims as being correct.

17 It's your job to take these definitions that I've
18 supplied and apply them to the issues that you are asked to
19 decide, including the issues of infringement and invalidity.

20 You should disregard any evidence presented at
21 trial which contradicts or is inconsistent with the
22 constructions and definitions that I have given you.

23 For claim limitations that I have not construed,
24 that is, I haven't defined them or interpreted them, you are
25 to use the plain and ordinary meaning of the terms as

1 understood by one of ordinary skill in the art, which is to
2 say in the field of the technology of the patent at the time
3 of the alleged invention.

4 The meaning of the words of the patent claims must
5 be the same when deciding both infringement and when
6 deciding invalidity.

7 Now, you've been provided with copies of the three
8 asserted patents, and they are in your juror notebooks, and
9 you may use them and refer to them in your deliberations.

10 I'll now explain to you how a claim defines what it
11 covers.

12 A claim sets forth in words a set of requirements.
13 Each claim sets forth its requirements in a single sentence.

14 If a technology satisfies each of these
15 requirements in that sentence, then it is covered by and
16 infringes the claim.

17 There can be several claims in a patent. A claim
18 may be narrower or broader than another claim by setting
19 forth more or fewer requirements. The coverage of a patent
20 is assessed on a claim-by-claim basis.

21 In patent law, requirements of a claim are often
22 referred to as the claim elements or the claim limitations.

23 When a method meets all the requirements of a
24 claim, the claim is said to cover that method, and that
25 method is said to fall within the scope of that claim.

1 In other words, a claim covers a method where each
2 of the claim elements or limitations is present in that
3 method. If a method is missing even one limitation or
4 element of a claim, the method is not covered by the claim.

5 And if the method is not covered by the claim,
6 ladies and gentlemen, the method does not infringe the
7 claim.

8 Now, the beginning portion or preamble of a claim
9 often uses the word "comprising." The word "comprising,"
10 when used in the preamble of a claim, means including but
11 not limited to or containing but not limited to.

12 When comprising is used in the preamble, if you
13 decide that an accused technology includes all the
14 requirements of that claim, the claim infringed.

15 This is true even if the accused technology
16 contains additional elements or limitations.

17 For example, a claim to a table comprising a
18 tabletop, legs, and glue would be infringed by a table that
19 includes a tabletop, legs, and glue, even if the table also
20 includes wheels to go on the ends of the legs.

21 This case involves two types of patent claims,
22 ladies and gentlemen, independent claims and dependent
23 claims.

24 An independent claim does not refer to any other
25 claim of the patent. An independent claim sets forth all of

1 the requirements that must be met in order to be covered by
2 that claim. It's not necessary to look at any other claim
3 to determine what an independent claim covers.

4 However, a dependent claim does not itself recite
5 all the requirements of a claim but refers to another claim
6 for some of its requirements. In this way, the claim
7 depends on another claim. It's sometimes said to refer to
8 the other claim.

9 The law considers a dependent claim to incorporate
10 all the requirements of the claims to which it refers or
11 from when it depends. The dependent claim then adds its own
12 additional requirements.

13 To determine what a dependent claim covers, it's
14 necessary to look at both the dependent claim and any other
15 claim to which it refers or from which it depends.

16 A method that meets all the requirements of both
17 the dependent claim and the claims from which it refers is
18 covered by that dependent claim.

19 Now, a patent owner has the right to stop others
20 from using the invention covered by its patent claims in the
21 United States during the life of the patent.

22 If a person makes, uses, sells, or offers to sell
23 within the United States or imports into the United States
24 what is covered by a patent claim without the patent owner's
25 permission, that person is said to infringe the patent.

1 In reaching your decision on infringement, keep in
2 mind that only the claims of a patent can be infringed.

3 You must compare the asserted claims, as I have
4 defined them, to the accused technology to determine whether
5 or not there is infringement.

6 You should not compare the accused technology with
7 any specific example set out in the patent or with prior art
8 in reaching your decision about infringement.

9 The only correct comparison, ladies and gentlemen,
10 is between the accused technology and the language of the
11 claim itself.

12 You must reach your decision on each assertion of
13 infringement based on my instructions about the meaning and
14 scope of the claims, the legal requirements for
15 infringement, and the evidence presented to you by both of
16 the parties.

17 Also, the issue of infringement is assessed on a
18 claim-by-claim basis.

19 Accordingly, there may be infringement as to one
20 claim, even if there is no infringement as to other claims.

21 I'll now instruct you on the specific rules you
22 must follow to determine whether the Plaintiff, IV, has
23 proven that the Defendants, Ericsson and T-Mobile, have
24 infringed one or more of the patent claims involved in this
25 case.

1 In this case, there are three possible ways that a
2 claim may be infringed, and I'll explain the requirements
3 for each of these types of infringement to you.

4 The three types of infringement are called direct
5 infringement, active inducement, and contributory
6 infringement.

7 Active inducement and contributory infringement are
8 referred to as indirect infringement. There cannot be
9 indirect infringement without someone else engaging in
10 direct infringement.

11 To prove direct infringement, the Plaintiff must
12 prove that Ericsson's alleged indirect infringement caused
13 direct infringement.

14 In this case, the Plaintiff, IV, alleges that
15 Ericsson, both directly and indirectly, infringes, and that
16 T-Mobile directly infringes the asserted claims.

17 IV's allegations of indirect infringement concern
18 both active inducement and contributory infringement with IV
19 contending that Ericsson's indirect infringement leads to
20 direct infringement by T-Mobile.

21 In order to prove infringement, IV must prove that
22 the requirements for one or more of these types of
23 infringement are met by a preponderance of the evidence,
24 that is, that it's more likely true than not true that all
25 of the requirements or one or more -- of one or more of

1 these types of infringement has been proven.

2 I'll now explain each of these types of
3 infringement in more detail.

4 In order to prove direct infringement of a patent
5 claim, the Plaintiff, IV, must show by a preponderance of
6 the evidence that the accused technology includes each and
7 every requirement or limitation of the claim either
8 literally or under the Doctrine of Equivalents.

9 In determining whether an accused technology
10 directly infringes a patent claim in this case, you must
11 compare the accused technology with each and every one of
12 the requirements or limitations of that claim to determine
13 whether the accused technology literally performs in the
14 United States each and every requirement or limitation
15 recited in the claim.

16 The asserted claims are not infringed by the sale
17 or manufacture of a product that is merely capable of
18 performing every element or limitation.

19 However, a method claim may be infringed even if
20 the infringer performs the infringing method only once.

21 A claim requirement is present if it exists in an
22 accused technology just as it is described in the claim
23 language, either as I've explained that language to you, or
24 if I did not explain it, as would be understood by one of
25 ordinary skill in the art.

1 If an accused technology admits any element recited
2 in a claim, then you must find that that particular
3 technology does not literally infringe that claim.

4 A patent can be directly infringed even if the
5 alleged infringer did not have knowledge of the patent and
6 without the infringer knowing that what it was doing is
7 infringement of the claim.

8 A patent may also be directly infringed even though
9 the accused infringer believes in good faith that what it's
10 doing is not infringement of the patent.

11 Infringement does not require proof that a party
12 copied the asserted claims.

13 A claim requirement is literally present if it
14 existed in an accused technology just as it is described in
15 the claim language, either as I've explained the language to
16 you, or as I've said, if I did not explain it, as it would
17 be understood by its plain and ordinary meaning of one of
18 skill in the art.

19 If an accused technology omits any requirement
20 recited in a claim, then you must find that the particular
21 technology does not infringe that claim.

22 If a person practices a method that does -- does
23 not meet all the requirements of a claim and thus does not
24 literally infringe that claim, there can still be direct
25 infringement if that method satisfies the claim under the

1 Doctrine of Equivalents.

2 Under the Doctrine of Equivalents, a technology
3 infringes a claim if the accused technology performs steps
4 corresponding to each and every requirement of the claim
5 that is*equivalent to, even though not literally met by, the
6 accused technology.

7 The Plaintiff, IV, has alleged that some but not
8 all of the elements of some of the asserted claims are
9 infringed under the Doctrine of Equivalents.

10 For only those claim elements, you may find that an
11 element is equivalent to a requirement of a claim that is
12 not literally met if a person having ordinary skill in the
13 field of the technology of the patent would have considered
14 the differences between them to be insubstantial or would
15 have found that the action in the accused technology, (1),
16 performs substantially the same function, (2), in
17 substantially the same way, (3), to achieve substantially
18 the same result as the requirement of the claim.

19 In order for the action to be considered
20 interchangeable, the action must have been known at the time
21 of the alleged infringement to a person having ordinary
22 skill in the field of the technology of the patent.

23 Interchangeability at the present time is not
24 sufficient. In order to prove infringement by equivalents,
25 IV must prove the equivalency of each claim element by a

1 preponderance of the evidence.

2 Now, IV also alleges that Ericsson is liable for
3 indirect infringement by actively inducing T-Mobile to
4 directly infringe the asserted claims literally or under the
5 Doctrine of Equivalents.

6 As with direct infringement, you must determine
7 whether there has been active inducement on a claim-by-claim
8 basis.

9 Ericsson is liable for active inducement of a claim
10 if IV proves by a preponderance of the evidence.

11 (1) that the acts are actually carried out by
12 T-Mobile and directly infringe that claim;

13 (2) that Ericsson took action intending to cause
14 the infringing acts by T-Mobile;

15 And, (3), that Ericsson was aware of or willfully
16 blind to the patent and knew that the acts, if taken, would
17 constitute infringement of the patent or that Ericsson was
18 willfully blind to that infringement.

19 If you find that Ericsson was aware of the patent
20 but that Ericsson believed that the acts it encouraged did
21 not infringe the asserted claims, Ericsson cannot be held
22 liable for inducement.

23 In order to establish active inducement of
24 infringement, it's not sufficient that T-Mobile directly
25 infringes the claim, nor is it sufficient that Ericsson was

1 aware of the acts by T-Mobile that allegedly constitute
2 direct infringement.

3 Rather, in order to find active inducement of
4 infringement, you must find either that Ericsson
5 specifically intended T-Mobile to infringe the asserted
6 claims or that Ericsson believed there was a high
7 probability that Ericsson would infringe the asserted claims
8 but deliberately avoided learning the infringing nature of
9 T-Mobile's acts.

10 The mere fact, if true, that Ericsson knew or
11 should have known that there was a substantial risk that
12 T-Mobile's acts would infringe the asserted claims would not
13 be sufficient for active inducement of infringement.

14 The Plaintiff, IV, must prove induced infringement
15 by a preponderance of the evidence.

16 IV alleges that Ericsson is liable for contributory
17 infringement by contributing to the direct infringement of
18 the asserted claims by T-Mobile.

19 As with direct infringement, you must determine
20 contributory infringement on a claim-by-claim basis.

21 Ericsson is liable for contributory infringement of
22 a claim if IV proves by a preponderance of the evidence:

23 (1) Ericsson sells, offers to sell, or imports
24 within the United States a component of a product or an
25 apparatus for use in a process during the time the asserted

1 patents were in force;

2 (2) the component or apparatus has no substantial
3 non-infringing use;

4 (3) the component or apparatus constitutes a
5 material part of the invention;

6 (4) Ericsson was aware of the asserted patents and
7 knew that the products or processes for which the component
8 has no other substantial use may be covered by a claim of
9 one or more of the asserted patents or may -- may satisfy a
10 claim of the same patent under the Doctrine of Equivalents;

11 And, (5), that use directly infringes the claim.

12 In order to prove contributory infringement, IV,
13 the Plaintiff, must prove each of the above requirements
14 have been met by a preponderance of the evidence.

15 I'll now instruct you on the rules that you must
16 follow in deciding whether or not Ericsson and T-Mobile have
17 proven that the asserted claims are invalid.

18 An issued -- excuse me. All issued United States
19 patents are accorded a presumption of validity based on the
20 presumption that the United States Patent and Trademark
21 Office, which you've heard referred to throughout the trial
22 simply as the PTO or the Patent Office, acted correctly in
23 issuing the patent.

24 To prove that any asserted claim is invalid, the
25 Defendants, Ericsson and T-Mobile, must persuade you by

1 clear and convincing evidence that the claim is invalid.

2 Like infringement, ladies and gentlemen, invalidity
3 is determined on a claim-by-claim basis.

4 You must determine separately for each asserted
5 claim whether that claim is invalid.

6 If one asserted claim is invalid, that does not
7 mean that any other asserted claim is necessarily invalid.

8 Claims are construed in the same way for
9 determining infringement as for determining invalidity.

10 You must apply the claim language consistently and
11 in the same manner for issues of infringement and for issues
12 of invalidity.

13 In making your determine -- determination as to
14 invalidity, you should consider each asserted claim
15 separately.

16 Prior art may include items that were publicly
17 known, or that have been used or offered for sale, or
18 references, such as publications or patents, that disclose
19 the claimed invention or elements of the claimed invention.

20 To be prior art, an item or reference must have
21 been made, known, used, published, or patented either before
22 the invention was made or more than one year before the
23 priority date of the patent.

24 Prior art does not include a publication by an
25 inventor that describes the inventor's own work and was

1 published less than one year before the priority date.

2 The priority date for both the '517 patent and the
3 '629 patent is July the 9th, 1999.

4 The priority date for the '206 patent is July 10th,
5 1998.

6 For the claim to be invalid because it is not new,
7 Ericsson and T-Mobile must show by clear and convincing
8 evidence that all of the requirements of that claim were
9 present in a single previous device or method that was known
10 of, used, or described in a single previous printed
11 publication or patent. We call these things anticipating
12 prior art.

13 To anticipate the invention, the prior art does not
14 have to use the same words as the claim, but all the
15 requirements of the claim must have been disclosed, either
16 stated expressly or implied to a person having ordinary
17 skill in the art of the technology of the invention so that
18 looking at that one prior art reference, that part -- that
19 person could make and use the claimed invention.

20 In some -- in order for someone to be entitled to a
21 patent, the invention must actually be new, and the inventor
22 must not have lost his or her rights by delaying the filing
23 of an application claiming the invention.

24 In general, inventions are new when the identical
25 apparatus, system, or method has not been made, used, or

1 disclosed before.

2 Anticipation must be determined on a claim-by-claim
3 basis.

4 Now, Ericsson and T-Mobile, the Defendants, contend
5 that certain of the asserted claims are invalid because the
6 claimed inventions are anticipated.

7 If you find that Ericsson and T-Mobile have proven
8 by clear and convincing evidence that a claim is
9 anticipated, you must find that the claim is invalid.

10 Prior art differing from the prior art considered
11 by the Patent Office may, but does not always, consider
12 [sic] more weight than prior art that was considered by the
13 Patent Office.

14 Ericsson and T-Mobile also contend in this case
15 that certain of the asserted claims are invalid as being
16 obvious.

17 Even though an invention may not have been
18 identically disclosed or identically described in a single
19 prior art reference before it was made by an inventor, the
20 invention may have been obvious to a person of ordinary
21 skill in the field of the technology of the patent at the
22 time the invention was made.

23 In this case, Ericsson and T-Mobile bear the burden
24 of establishing obviousness by clear and convincing
25 evidence.

1 In determining whether a claimed invention is
2 obvious, you must consider the level of ordinary skill in
3 the field of technology of the patent that someone would
4 have had at the time the claimed invention was made, the
5 scope and the content of the prior art, and any differences
6 between the prior art and the claimed invention, as well as
7 the ordinary knowledge of a person of ordinary skill at the
8 time of the invention.

9 The skill of the actual inventor is not necessarily
10 relevant because inventors may possess something that
11 distinguishes them from workers of ordinary skill in the
12 art.

13 Keep in mind, ladies and gentlemen, that the
14 existence of each and every element of the claimed invention
15 in the prior art does not necessarily prove obviousness.
16 Most, if not all, inventions re -- rely on the building
17 blocks of prior art.

18 In considering whether a claimed invention is
19 obvious, you should consider whether as of the priority date
20 of the asserted patents there was a reason that would have
21 prompted a person of ordinary skill in the field to combine
22 the known elements in a way that the claimed invention does,
23 taking into account such facts as:

24 (1) whether the claimed invention was merely the
25 predictable result of using prior art elements according to

1 their known function;

2 (2) whether the claimed invention provides an
3 obvious solution to a known problem in the relevant field;

4 (3) whether the prior art teaches or suggests the
5 desirability of combining elements claimed in the invention;

6 (4) whether the prior art teaches away from
7 combining elements in the claimed invention;

8 (5) whether it would have been obvious to try the
9 combinations of elements in the claimed invention, such as
10 when there is a design need or market pressure to solve a
11 problem, and there are a finite number of identified
12 predictable solutions;

13 And, (6), whether the change resulted more from
14 design incentives or other market forces.

15 In determining whether the claimed invention was
16 obvious, consider each claim separately and consider only
17 what was known at the time of the invention.

18 Now, in determining whether the claimed invention
19 was obvious, do not, ladies and gentlemen, use hindsight.

20 In other words, you should not consider what a
21 person of ordinary skill in the art would know now or what
22 has been learned from the teaching of the asserted patents.

23 In making these assessments, you should take into
24 account any objective evidence, sometimes called secondary
25 considerations, that may have existed at the time of the

1 invention and afterwards that may shed light on
2 non-obviousness.

3 The following are possible secondary
4 considerations, but it's up to each of you to decide whether
5 secondary considerations of non-obviousness exist at all.

6 (1) whether the invention was commercially
7 successful as the result of the merits of the claimed
8 invention rather than the result of design needs or market
9 pressure, advertising, or similar activities;

10 (2) whether the invention satisfied a long-felt
11 need;

12 (3) whether others had tried and failed to make the
13 invention;

14 (4) whether others copied the invention;

15 (5) whether there were changes or related
16 technologies or market needs contemporaneous with the
17 invention;

18 (6) whether the invention achieved unexpected
19 results;

20 (7) whether others in the field praised the
21 invention;

22 (8) whether persons having ordinary skill in the
23 art of the invention expressed surprise or disbelief
24 regarding the invention;

25 (9) whether others sought or obtained rights to the

1 patent from the patentholder;

2 And, (10), whether the inventor proceeded contrary
3 to accepted wisdom in the field.

4 In support of obviousness, you may also consider
5 whether others independently invented the claimed invention
6 before or at the same time as the named inventor thought of
7 it.

8 If you find that Ericsson and T-Mobile have proven
9 the obviousness of a claim by clear and convincing evidence,
10 then you must find that that claim is invalid.

11 Now, several times in these instructions, I
12 referred to a person of ordinary skill in the field of the
13 invention. It's up to you, ladies and gentlemen, to decide
14 the level of ordinary skill in the field of the invention.

15 In deciding what the level of ordinary skill is,
16 you should consider all the evidence introduced at trial,
17 including:

18 the levels and education -- the levels of education
19 and experience of persons working in the field;

20 the types of problems encountered in the field;

21 prior art solutions to those problems;

22 rapidity with which innovations are made;

23 and the sophistication of the technology.

24 A person of ordinary skill in the art is a
25 hypothetical person who is presumed to have known all of the

1 relevant prior art at the time of the claimed invention.

2 If you find either, (1), Ericsson or T-Mobile has
3 directly infringed, or, (2), that Ericsson has directly
4 infringed [sic] and T-Mobile has directly infringed any
5 asserted claim -- excuse me, that Ericsson has indirectly
6 infringed and T-Mobile has directly infringed any asserted
7 claims and if you also find that the infringed asserted
8 claims are not invalid, then you must consider what amount
9 of damages to award to the Plaintiff, IV.

10 If you find that there was no direct -- no direct
11 infringement by either Ericsson or T-Mobile of any of the
12 asserted claims, then you should not award any damages to
13 IV.

14 I'll now instruct you about the measure of damages,
15 but by instructing you on damages, ladies and gentlemen, I'm
16 not -- I'm not suggesting which party should win this case
17 on any issue.

18 The damages that you award, if any, must be
19 adequate to compensate the Plaintiff, IV, for any
20 infringement that you may find. You must not award IV more
21 damages than are adequate to compensate for the
22 infringement, nor should you include any additional amount
23 for the purpose of punishing either Ericsson or T-Mobile or
24 for setting any example.

25 IV has the burden to establish the amount of

1 damages by a preponderance of the evidence. IV is not
2 entitled to damages that are remote or speculative.

3 If you determine that any asserted claim is
4 infringed and is not invalid, then IV is entitled to recover
5 no less than a reasonable royalty for each infringing sale
6 or use of its inventions.

7 IV seeks damages in the form of a reasonable
8 royalty. A reasonable royalty is defined as the money
9 amount IV and Ericsson and T-Mobile would have agreed upon
10 as a fee for the use of IV's invention at the time the
11 infringement began.

12 The determination of a damages award, ladies and
13 gentlemen, is not an exact science, and the amount need not
14 be proven with unerring precision.

15 You may approximate, if necessary, the amount to
16 which IV is entitled. However, damages may not be
17 determined by mere speculation.

18 It may be proper to award a damages amount if the
19 evidence shows the extent of the damages as a matter of just
20 and reasonable inference.

21 A royalty is a payment to a patentholder in
22 exchange for the right to make, use, sell, or import the
23 claimed invention.

24 A reasonable royalty is the amount of money to be
25 paid for a license to make, use, or sell the invention that

1 a willing patent owner and a willing prospective licensee
2 would have agreed to immediately before the infringement
3 began as a part of a hypothetical negotiation.

4 In considering this hypothetical negotiation, you
5 should focus on what the expectations of the patentholder
6 and the infringer would have been had they entered into
7 agreement at that time and had they acted reasonably in
8 their negotiations.

9 In determining this, you must assume that both
10 parties believed the patents were valid and infringed and
11 that the patentholder and the infringer were willing to
12 enter into an agreement.

13 The reasonable royalty that you determine must be
14 the royalty that would have resulted from this hypothetical
15 negotiation, not simply the royalty that either party would
16 have preferred.

17 Evidence of things that happened after infringement
18 first began may be considered in evaluating the reasonable
19 royalty only to the extent that the evidence aids in
20 assessing what royalty would have resulted from a
21 hypothetical negotiation.

22 What the parties -- where the parties dispute a
23 matter concerning damages for infringement, it is the
24 Plaintiff's burden to prove that it is more probable than
25 not that the Plaintiff's version is correct.

1 Plaintiff must prove the amount of its damages with
2 reasonable certainty, but not need -- but need not prove the
3 amount of its damages with mathematical precision.

4 However, Plaintiff, again, is not entitled to
5 damages that are remote or purely speculative.

6 The amount you find as damages must be based on the
7 value attributable to the patented technology, as distinct
8 from other unpatented features of the accused technology.

9 Plaintiff, IV, bears the burden to establish the
10 amounts attributable to the patented feature, that is, IV
11 must give evidence tending to separate or apportion between
12 the patented features and the unpatented features.

13 In determining the reasonable royalty, you should
14 consider all the facts known and available to the parties at
15 the time the infringement began.

16 Some of the kinds of factors that you should
17 consider in making your determination are:

18 (1) the royalties received by the patentee for
19 licensing of the asserted patents proving or tending to
20 prove an established royalty;

21 (2) the rates paid by the licensee for the use of
22 other patents comparable to the asserted patents;

23 (3) the nature and scope of the license as
24 exclusive or non-exclusive or as restricted or
25 non-restricted in terms of territory or with respect to whom

1 the manufactured product may be sold;

2 (4) the licensor's established policy and marketing
3 program to maintain his patent monopoly by not licensing
4 others to use the invention or by granting licenses under
5 special conditions designed to preserve that monopoly;

6 (5) the commercial relationship between the
7 licensor and licensee, such as whether they are competitors
8 in the same territory in the same line of business or
9 whether they are inventor and promoter;

10 (6) the effect of selling the patent specialty in
11 promoting sales of other products of the licensee, the
12 existing value of the invention to the licensor as a
13 generator of sales of its non-patented items, and the extent
14 of such derivative or convoyed sales;

15 (7) the duration of the patent and the term of the
16 license;

17 (8) the established profitability of the product
18 made under the patent, its commercial system, and its
19 current popularity;

20 (9) the utility and advantages of the patented
21 invention over the old modes or devices, if any, that had
22 been used for achieving similar results;

23 (10) the nature of the patented invention and the
24 benefits to those who have used the invention;

25 (11) the extent to which the infringer has made use

1 of the invention and any evidence probative of the value of
2 that use;

3 (12) the portion of the profit or of the selling
4 price that may be customary in the particular business or in
5 comparable businesses to allow for the use of the invention
6 or analogous inventions;

7 (13) the value that should be credited to the
8 invention as distinguished from non-patented elements, the
9 manufacturing process, business risk, or significant
10 features or improvements added by the infringer;

11 (14) the opinion testimony of qualified experts;

12 And, (15), the amount that a licensor, such as the
13 patentee, and a licensee, such as the infringer, would have
14 agreed upon at the time the infringement began if both sides
15 had been reasonably and voluntarily trying to reach an
16 agreement, that is, the amount which a prudent licensee who
17 desired as a business proposition to obtain a license to
18 manufacture and sell a particular article embodying the
19 patented invention would have been -- would have been
20 willing to pay as a royalty and yet be able to make a
21 reasonable profit and which amount would have been
22 acceptable to a prudent patentee who was willing to grant a
23 license.

24 Now, ladies and gentlemen, none of these factors is
25 dispositive, and you could -- you should and you can

1 consider the evidence that's been presented to you in this
2 case on each of these factors.

3 You may also consider any other factors which in
4 your mind have increased or decreased the royalty the
5 infringer would have been willing to pay and the patent
6 owner would have been willing to accept acting as normally
7 prudent business people.

8 Now, when determining the reasonable royalty, you
9 may consider evidence concerning the amounts that other
10 parties have paid for rights to the patents in question or
11 for rights to similar technologies.

12 A license agreement need not be perfectly
13 comparable to a hypothetical license that would have been
14 negotiated between the Plaintiffs and Defendants in this
15 case in order for you to consider it.

16 However, if you choose to rely on evidence from any
17 other license agreements, you must account for any
18 differences between those licenses and the hypothetically
19 negotiated license between Plaintiff, IV, and Defendants
20 Ericsson and T-Mobile in terms of the technologies, the
21 economic circumstances of the contracting parties when you
22 make your reasonable royalty determination.

23 In determining the amount of damages, you must
24 determine when damages began.

25 Damages begin to accrue when an issued patent is

1 infringed. For any of the three asserted patents where you
2 find that an asserted claim is both infringed and not
3 invalid, you may not award any damages for activities
4 occurring before the damages start.

5 Now, with those instructions, ladies and gentlemen,
6 we will now hear closing arguments for the attorneys for
7 both of the parties -- for both sides in this case.

8 Plaintiff, you may now present your first closing
9 argument.

10 Would you like a warning on your time?

11 MR. BLACK: Yes, Your Honor.

12 THE COURT: What type of warning?

13 MR. BLACK: 20 minutes, please.

14 THE COURT: 20 minutes left or 20 minutes have been
15 used?

16 MR. BLACK: No, Your Honor, 20 minutes in, and then
17 I'll finish at 20 -- 25 minutes.

18 THE COURT: I'll warn you when you have used 20
19 minutes.

20 You may proceed, Mr. Black.

21 MR. BLACK: Thank you, Your Honor.

22 Ladies and gentlemen of the jury, thank you for
23 your service. I've seen you folks all week, listening,
24 watching, taking down notes relating to the complex
25 technology at issue in this case.

1 My role in the closing argument is to try to put
2 together the pieces of the puzzle, of the evidence that you
3 heard during this week, and to explain for you why we met
4 our burden of the preponderance of the evidence on the
5 issues of infringement and damages.

6 I will also show that the Defendants failed to meet
7 their much higher burden of clear and convincing evidence on
8 the issue of invalidity.

9 When I'm done, I will explain how to fill in the
10 jury verdict form, and I'll ask you to return a verdict for
11 Intellectual Ventures of \$77.3 million, \$68.3 million
12 against T-Mobile for direct infringement, and \$9 million
13 against Ericsson for their infringement.

14 Now, we are here because of two provisions of the
15 United States Constitution. Article 1, Section 8, the
16 Constitution grants the right to inventors for patents to
17 protect their intellectual property. It is property like
18 any other property. And when that property is used without
19 permission, compensation must be made.

20 The second provision of the Constitution, which is
21 at issue here today, is the Seventh Amendment to the
22 Constitution and the Bill of Rights. And as Judge Gilstrap
23 pointed out, there is a long history of the right to jury
24 trial in this country.

25 You might ask, though, why do we handle patent

1 cases in jury trials? We ask a jury of folks who don't have
2 prior experience with complex issues relating to
3 telecommunications. The lawyers, the expert witnesses have
4 months or years to work on these cases, and then we ask a
5 lay jury to decide it.

6 The reason is because the founders were believers
7 in common sense, and you heard the Court say that in the
8 charge. You should rely on your common sense. And that is
9 what we are going to ask you to do today.

10 So let's start at the beginning of the trial with
11 the evidence. And I'll show you how the pieces all fit
12 together.

13 We first heard from Dr. Jorgensen. An incredible
14 man, brilliant but humble, a man who invented, a man who
15 began his education at MIT getting a degree in theoretical
16 physics. He then went on to medical school. He became a
17 surgeon, but he fell in love with the idea of innovating and
18 in getting into to the telecommunications area.

19 So while he was a surgical resident, he would study
20 at night in the library for two hours to learn
21 telecommunications. He must have been very tired.

22 And then he left the practice of medicine to join a
23 series of start-ups, some of which were quite successful,
24 and eventually landed as the chief technical officer at
25 Malibu Networks, where he tried to bring to fruition his

1 ideas relating to wireless technology.

2 He saw and he understood when he learned in the
3 library that the way -- voice traffic and data traffic was
4 being handled differently.

5 Voice traffic -- traffic was in packets that were
6 in one pipe. Data traffic through a completely different
7 system and network.

8 He could see the Internet, which was relatively new
9 at that point, and the potential conversions with
10 telecommunications technology.

11 Today, we all take for granted the phones that we
12 carry around in our pockets, these smartphones. But the
13 first iPhone was 2007. That's 11 years ago. And
14 Dr. Jorgensen was working 10 years before that.

15 It's difficult to think about and remember the pace
16 of technology. But in those days, the evidence was these
17 phones didn't work very well when it came to data. They
18 just weren't that sophisticated.

19 But Dr. Jorgensen thought if you could put all the
20 data and all the voice packets in one pipe, you could build
21 incredible wireless technology. But to do that was going to
22 be very difficult and challenging.

23 Now, he eventually solved the problems, and we
24 heard how he built prototypes, how he built a company, how
25 he grew the company to over a hundred engineers. He built

1 prototypes. He spoke to some of the big names in the
2 industry, but then he had bad luck.

3 The Internet bubble burst in 2003, and the company
4 failed because they could not get additional investors. He
5 was an innovator, and he was before his time.

6 This technology is now being used in the 4G
7 networks that we are all using in our phones today. That's
8 what happens sometimes. It's not just about innovation and
9 entrepreneurship, it's also about timing.

10 He did obtain three patents. And in 2014, T-Mobile
11 and the rest of the industry turned on something called
12 VoLTE, Voice over LTE. Voice and data on the same channel,
13 that is what he invented. The ability to handle voice and
14 data on the same channel. He didn't invent Voice over IP.
15 He didn't invent LTE. He didn't take any ideas from
16 Ericsson.

17 But he did invent, and he was shown to be the first
18 to invent at this trial, the ability to practically do and
19 put voice and data in the same pipe at the same time.

20 And the value of that invention to T-Mobile is
21 immense, massive spectrum savings, save that company from a
22 competitive challenge it was not ready to meet.

23 This is the T-Mobile 4G network. Half of the
24 equipment on the network is at issue in this case. It's
25 Ericsson equipment. The other half is Nokia equipment. We

1 have a license with Nokia. Nokia is an investor in IV, like
2 lots of other companies.

3 We're here because the charge in this case says
4 we're entitled to a reasonable royalty for every performance
5 of the method.

6 Each individual performance of the method is an act
7 of infringement. Those acts of infringement are coming in
8 the billions. Every time a packet is sent in a voice call,
9 that's infringement.

10 Every voice call that T-Mobile now serves in the
11 United States in over -- Voice over LTE, which is
12 85 percent of its network, that's infringement. And we are
13 entitled to a royalty, as the Court just charged, for each
14 and every infringement from T-Mobile.

15 Now, Ericsson is induced and contributed to the
16 infringement by providing equipment and assisting T-Mobile.
17 But the real damages in this case are against T-Mobile who
18 participated in the trial in a way.

19 Now, we have the burden on infringement, and we
20 proved that T-Mobile infringed 10 claims from the '206
21 patent, the '517 patent, and the '629 patent.

22 We brought experts. We brought Dr. Tim Williams, a
23 Ph.D. in electrical engineering from the University of
24 Texas. He's an inventor on 26 patents.

25 That testimony was precise. It was deliberate. It

1 was not the most exciting testimony at the trial, but it's
2 something that we had to do.

3 Our burden -- our burden was to go through the
4 claims and check every box and prove infringement, and we
5 did that.

6 And we also brought Douglas Chrissan, Dr. Chrissan
7 with a Ph.D. from Stanford University. He looked at the
8 code. He worked closely with Dr. Williams. We met our
9 burden.

10 We checked all the boxes. I do not have time to go
11 through all of the claims. I'm just going to show you a
12 few, and I'm going to try to hit the issues that I think the
13 Defendants are going to use as excuses to get out from under
14 their massive liability here.

15 This is Claim 109 and Claim 112.

16 The principal issue on this one seems to be they
17 are pretending that end-user QoS means that the end-user
18 needs to call up the CEO of T-Mobile and tell them what kind
19 of service he wants. This is nonsense.

20 This patent, which is 80 columns long, is about
21 data networking. It's about the quality on a data network
22 which is something of tremendous interest to T-Mobile, not
23 just for itself but for its customers.

24 They have to provide great quality of service to
25 their customers. That's what their business is, or they

1 wouldn't have a business.

2 Now, how do they do that?

3 Now, we learned that in the guts of the base
4 station, the eNodeB, there's a table -- a parameter table,
5 and that parameter table has in it something called QCI
6 Profile. QCI stands for QoS class identifier, quality of
7 service identifier. That is the end-user quality of service
8 requirement. It is in T-Mobile's base station, every single
9 one of them, and it is consulted and used on every single
10 transmission.

11 This is an Ericsson document about the scheduler.
12 It says at the bottom: Optimize capacity while satisfying
13 QoS for everyone.

14 I asked Dr. Wicker: Optimize capacity while
15 satisfying QoS?

16 Correct.

17 I'm showing him this document.

18 He said: That's correct.

19 End-users, right?

20 Right.

21 We proved infringement of all the claims of the
22 '206 patent.

23 And then we moved on to the '517 patent,
24 Claims 1 and 4.

25 The principal debate here was a matter of legal --

1 legal dispute about the meaning of these words. They're
2 playing games here. This is the CPE, customer premises
3 equipment.

4 Now, you have to remember that in the old days
5 there were only two types of equipment in a telephone
6 network. There was a network equipment. That was AT&T.
7 And there was the customer equipment that you connected to.

8 And by the way, if the network equipment broke,
9 AT&T would fix it. If the customer equipment broke, that
10 was your problem.

11 This claim element has been defined by the Court.
12 In fact, this definition comes right out of the patent.
13 Devices residing on the premises of a customer and used to
14 connect to a telephone network, including -- and then
15 examples are given. It's open. Anything new, anything not
16 in this definition is included, as long as it meets the
17 first two elements.

18 And everybody agrees that mobile phones, hotspots,
19 tablets are used to connect to the wireless telephone
20 network and that the wireless counts. That's really
21 important.

22 Everybody agrees that wireless counts, but they say
23 all the mobile devices on T-Mobile's network don't count
24 because they don't reside on the premises of the customer.

25 Well, phones don't have addresses. They don't have

1 Social Security numbers. They don't get called for jury
2 duty. But they do -- they are located in a certain place,
3 and they are often located in your home.

4 Now, we showed a number of examples which they
5 continued to ignore during the trial. These are all on a
6 spreadsheet, PTX-1131. The device in the middle is a
7 hotspot. It sits on your home, on your desk, gets radio
8 waves in. It sends WiFi out.

9 Even under their definition, that would satisfy it.
10 But the way to look at this claim, customer premises
11 equipment, if it's on the customer premises, it satisfies
12 the claim.

13 We had some help from Dr. Acampora on this. He
14 showed a diagram with his def -- the definition of CPE
15 station at the bottom. And what did he point to as the CPE
16 station in his analysis? A personal computer on the left, a
17 notebook computer.

18 There are CPE's everywhere under this definition.

19 The '517 patent, we also had an issue relating to
20 Dr. Wicker's opinions. We only had to prove that Claim 1
21 infringed.

22 Dr. Wicker, though, said that we didn't show there
23 was allocation of bandwidth that was dynamic. And I asked
24 him a question because we are having some trouble
25 understanding the position.

1 Claim 1 only has these elements, (a) through (f).
2 Claim 2 adds the element of dynamic allocation. And we were
3 scratching our heads. Why is he talking about dynamic
4 allocation? That's in Claim 2 which is not asserted.

5 And so I asked him: So in your view, it has to be
6 dynamic scheduling, right? You have to have dynamic uplink
7 and downlink control. That's what you just said. And that
8 element actually appears in Claim 2, correct?

9 That's correct.

10 On the '629 patent, we had a lot of evidence in the
11 trial about the reservation algorithm and isochronous
12 treatment. Very complicated.

13 For this one, we had to dig into the code. We got
14 Doug Chrissan -- Dr. Doug Chrissan to come in. He did a
15 source code review. We had to close the courtroom. He then
16 used his analysis. He worked with Dr. Williams, and
17 Dr. Chrissan validated that analysis to explain the theory.

18 But it's very difficult to explain the workings of
19 the software in the Ericsson base stations in the con --
20 short confines of this courtroom and this proceeding.

21 We did our best, though. If they had given us the
22 test results at the beginning, we wouldn't have to do any of
23 this, because as you will recall, Dr. Wicker, six days
24 before his report was due, was on the phone with Ericsson in
25 Sweden setting up a set of tests. And those tests, which he

1 had them planned with very poor service conditions, but
2 nevertheless resulted in data that we were able to use to
3 prove our case, because they've taken this position that
4 there are no reservations and no isochronous treatment.

5 Now, this is Dr. Chrissan's slide. This was meant
6 for engineers.

7 And he said about the reservations, and I'm looking
8 at the third line: And at the end -- so when the timer
9 starts, that's when your second voice packet arrives.

10 That's the start of a reservation process that ends
11 with an allocation. Reservation and then an allocation.
12 That's like making a plane reservation for next month, you
13 hold the reservation open the entire time, but you know
14 what, when it's time to leave, you actually have to go to
15 the airport to check in. And sometimes your plane is going
16 to get moved a little, sometimes you're going to get bumped,
17 sometimes the flight is canceled.

18 Dr. Williams explained all this in technical deep
19 analysis. And what he pointed to was Reserve 4 at the
20 bottom here where we see the second reserving step. But
21 note that this is a blue line with a -- with a mark on one
22 end and a mark on the other. This is a software process
23 that he said, to an engineer, that that's a reservation
24 process, just as Dr. Chrissan did.

25 Now, we're going to hear, I'm sure, on -- the

1 Defendants stand up and start talking about what happens
2 over here at 81, 81, 81. But they won't talk about that
3 blue line, that blue line which says Reserve 4. That was
4 Dr. Williams's opinion. He was correct.

5 But even without Dr. Williams's opinion, we'd still
6 prevail here because we had an interesting discussion about
7 these tests that Dr. Wicker did. He said there's a random
8 -- random process. There's a scheduling competition.
9 Scheduling competition is not a competition where Mr. 40
10 here wins the grant every single time.

11 Their testimony tried to simplify things. They're
12 wrong. There is reservations and isochronous behavior in
13 this system.

14 I asked Dr. Wicker about the scheduling competition
15 that he said occurred like when someone goes to a restaurant
16 and gets a random table.

17 And I said, you know, what happens if you go to a
18 crowded restaurant 10 times in a row every Thursday morning
19 and you get the same table? Wouldn't that make you think
20 someone was keeping a reservation?

21 And he said: Well, let's see. So if the person
22 came and it was a crowded restaurant and they always had a
23 table waiting for them, that would be an indication that
24 there may have been a reservation.

25 Yes, that's right.

1 Now, then we heard from Dr. Acampora.
2 Dr. Acampora, we call the man in the box, because he put
3 this slide up from Forslow, a reference that was before the
4 Patent Office. And he told you, ladies and gentlemen of the
5 jury, that that box on the left was a box. He's right.

6 It's a box drawn on the page. He implied it's a
7 box like that Ericsson base station which we've seen, and
8 maybe it will be trotted out again for who knows what
9 reason.

10 But when I pointed out to him that what was
11 actually in that box was a BSS, which is a combination of a
12 BSC and a BTS, he panicked because he knew the truth, that
13 if he had to disclose what was actually in that box that he
14 was pretending was a base station, you -- you would learn
15 that it covered a third of the state of Texas. And it took
16 me half an hour to get him to admit it. And even after I
17 showed him the Forslow document that defines a BS as a base
18 station, he still denied it.

19 His evidence was not credible. It was not
20 convincing. It certainly was not clear. They did not meet
21 their burden of clear and convincing evidence.

22 The Turina reference that he relies on was before
23 the Patent Office.

24 We can't tell whether he knew about it or didn't
25 know about it when he wrote his report. He didn't seem to

1 care. His report was 950 pages long, and it was prepared by
2 calling his opinions in over the phone to the law firm and
3 then getting documents back and reviewing them.

4 Forslow was also in front of the Patent Office.
5 That's his second reference. He said, well, maybe they
6 didn't review it. Well, this is in the record here in
7 DTX-6. This is the file history for the '206. This is an
8 IDS. It shows the Forslow reference, and the line along the
9 bottom: All references considered except where lined
10 through. There's no line through it. The examiner
11 considered it. Check the box.

12 His final reference was Passas, an article from a
13 magazine, eight pages, talking about wireless ATM, the very
14 technology that Dr. Jorgensen had rejected when he became
15 the inventor here.

16 The real name of this project was the Magic WAND.
17 And Dr. Acampora wanted to come into this courtroom and tell
18 you that while he respects patents because he has many of
19 his own and despite the fact that he's testified over 30
20 times in the last five years, almost always for the defense,
21 that these patents -- all three of them are invalid, all
22 four of examiners who looked at them were wrong, and he's
23 right. He wanted to take the Magic WAND and make
24 Dr. Jorgensen's patents go away. And that's not right.

25 THE COURT: 20 minutes have been used.

1 MR. BLACK: Thank you.

2 We brought Dr. Chrissan in, and he did an analysis
3 for the damages case. He looked at 18 Ericsson patents.
4 It's their proud list. Tell you why we know because when we
5 looked at the inventors on these patents -- oops -- we found
6 that they were the Ericsson people in the photograph that
7 they keep showing us from the European Patent Office.

8 He did this very detailed analysis. They didn't do
9 anything in response. There was some testimony about
10 Turina. No one from Ericsson came in to even talk about
11 their own patents.

12 Dr. Chrissan analyzed the patents, and that was
13 the lead -- and lead in for his opinion that they were 20 to
14 25 percent less infrastructure required. Enormous amounts
15 of money in savings for T-Mobile as a result of the
16 patents-in-suit.

17 That was the feed-in to Dr. Bratic -- Mr. Bratic's
18 expert opinions on damages. He did an analysis and reached
19 a conclusion that \$77.4 million was owed to IV.

20 Now, look, that's an enormous sum of money in -- in
21 any sense. But for T-Mobile, not really. This is only 6.3
22 cents -- 6.3 cents per subscriber per month. 30 days in a
23 month, couple of calls a day, we're talking about a fraction
24 of a fraction of a penny for each use of the invention. The
25 charge says we're entitled to reasonable royalty for each

1 use. The number's large because T-Mobile's use is so large.

2 Now, Dr. Bratic also gave another opinion that if
3 you were to only look at the infrastructure base, it would
4 be \$9 million. And that leads me to the conclusion here,
5 the jury verdict form. You'll receive the jury verdict
6 form, and we will ask you to fill out as shown on the
7 screen.

8 Question 1: Yes, for T-Mobile; yes for Ericsson.

9 Question 2: No, save the Jorgensen patents.

10 Question 3: For T-Mobile \$68,368,561.00;
11 \$9 million for Ericsson.

12 The number that's important to us is the line for
13 T-Mobile. Ericsson's infringement liability is more limited
14 in time because of the law and because primary mode of
15 infringement here is inducement.

16 The T-Mobile number is the one that's important to
17 us.

18 Finally, I want to thank you once again for your
19 time and attention in this matter. On behalf of myself, my
20 team, Intellectual Ventures, it's been an honor and a
21 privilege to try this case here before you. And the fate of
22 IV is in your hands. Thank you.

23 THE COURT: Defendant may now present its closing
24 argument to the jury.

25 Would you like a warning on your time, Mr. Kubehl?

1 MR. KUBEHL: I would, Your Honor. 10 minutes,
2 please.

3 THE COURT: 10 minutes remaining.
4 You may proceed.

5 MR. KUBEHL: Thank you, Your Honor.

6 Good morning, ladies and gentlemen. I want to
7 start today with the same message that I came to you with
8 Monday morning. Ericsson is here because IV sued Ericsson
9 and its customer T-Mobile.

10 It's funny to hear that this case is really about
11 T-Mobile and IV. T-Mobile is a Seattle company. IV is a
12 Seattle company. This was a case against T-Mobile only, and
13 really for T-Mobile you all shouldn't be sitting here right
14 now.

15 They chose to sue Ericsson. That's why we're here
16 today.

17 It's the Ericsson base station that is the only
18 device that's accused of practicing the elements of these
19 method claims. Those method claims happen inside of the
20 Ericsson base station. They don't happen across the
21 T-Mobile network. They happen in the Ericsson base station.

22 Ericsson designed that base station, built that
23 base station. You can tell from this week, it's -- it's
24 proud of that base station, proud of the work that it did.
25 And it's here to defend itself and its customer, and

1 Ericsson has responsibility for this case.

2 The Ericsson base station that's used in T-Mobile's
3 network does not infringe, and that means Ericsson doesn't
4 infringe, and it means its customer, T-Mobile, does not
5 infringe.

6 I want to start by walking through the timeline
7 that we've heard in this case, and I want to do it kind of
8 from the perspective that you're hearing from IV and maybe
9 see some data points that are a little bit different than
10 what match up with the IV story.

11 So you heard this morning and we heard earlier in
12 the trial from Dr. Jorgensen a story of Dr. Jorgensen really
13 starting his inventive concepts that relate to these patents
14 way back -- way back when he was in medical school and in
15 the library and starting his own companies and really coming
16 up with these ideas. And then I think we heard today that
17 finally he was able to sort of bring them to fruition when
18 he finally got to Malibu.

19 But what we saw on cross-examination of -- of
20 Dr. Jorgensen was that it actually wasn't the case that he
21 went directly from his company, EIS, to Malibu.

22 There was actually a company in between that called
23 Pacific Access. And he told us on cross-examination that he
24 actually hadn't even started thinking about the issues for
25 his technology for Malibu until he left Pacific Access, and

1 that wasn't until 1998.

2 Well, Malibu started in 1998. And he filed his
3 patent application in the middle of 1998. So that -- that
4 story is a little bit different than the one that we heard
5 in direct examination and the one that we heard in the
6 opening today.

7 This is a timeline that IV showed, and we all agree
8 on one thing, that the Jorgensen patents, the asserted
9 patents, were filed here in 1998.

10 And you can see that's kind of smack in the middle
11 of the -- the 2G technology, the second generation of
12 wireless technology.

13 If we go forward on the timeline, in 2004, IV buys
14 patents from Malibu Networks. And we heard in the opening
15 that it was just three patents. And I was surprised today
16 that we heard again that it was three patents. We know the
17 evidence has shown us that it was actually 22 patents. It
18 wasn't three patents. It was 22.

19 If we go forward four years from the purchase of
20 the patents, we land at May 2008. And before we -- before
21 we get to what happened in May 2008, as I understand it, the
22 IV sort of view is that Dr. Jorgensen was ahead of his time,
23 that he had inventions that the industry hadn't caught up
24 with yet, and his inventions really were the key to this
25 Voice over LTE technology.

1 And so eventually down the road, when the industry
2 caught -- caught up with him, those patents would be really,
3 really valuable.

4 So what happened on May 2008, is Verizon did a
5 portfolio-wide deal with IV where they got rights to we
6 heard tens of thousands of patents, and these patents were
7 among those.

8 Now, in -- May 2008, LTE was on the verge of being
9 released, and Voice over LTE was certainly on folks' minds.

10 So you would expect that when we look at the IV
11 documents and how they treated these patents, that they
12 would have been at least discussed, maybe even prominently
13 discussed with Verizon.

14 And -- and we'd also think probably that the
15 internal valuation that IV gave to those patents would be at
16 least pretty decently high.

17 But what we actually see is that they weren't
18 discussed at all. They weren't shown to Verizon.

19 Mr. Paschke, the corporate representative of IV,
20 told us that in that -- in negotiation with Verizon, these
21 three patents had nothing to do with it, they weren't
22 discussed.

23 And we also know that the valuation that IV gave to
24 those patents at that time was very modest compared to the
25 other IV patents in the portfolio.

1 So if we flash forward, then, to 2014, we sort of
2 heard the story this morning about that. On the T-Mobile
3 side, their view is that T-Mobile was desperate to get this
4 Voice over LTE technology, and that it would have paid
5 anything it took to get licensees to these patents,
6 certainly, gladly would have paid \$77 million for a license
7 to these patents.

8 Okay. Well, let's look at another data point.
9 Three years further. Three years down the road, just last
10 year, AT&T does a portfolio-wide deal with IV, again,
11 getting rights to tens of thousands of -- of patents.

12 And now -- I mean, now LTE is big. Voice over LTE
13 is out there. It's in full swing. AT&T is using it. So,
14 certainly, now in the AT&T deal, these three patents are
15 going to be front and center.

16 I mean, these are going to be a big lever point for
17 this deal. And that valuation, I bet that's really sky
18 rocketed up by now, that internal valuation of the way IV
19 looks at these patents.

20 Mr. Paschke was actually the deal lead on that
21 deal, and he was responsible for picking which patents they
22 would be showing AT [sic] and negotiating with. And
23 Mr. Paschke told us that in those AT&T discussions, these
24 patents weren't discussed or even shown to AT&T.

25 And as far as the valuation goes, the internal

1 valuation for IV these patents actually decreased
2 75 percent from the level it was at in the Verizon deal.

3 So that's -- that's the -- the sort of story we're
4 getting from IV about these patents, but it really doesn't
5 make sense in light of the data points that we have.

6 I want to talk about some of the things that -- at
7 least from our perspective, IV just didn't want you to see
8 in this case. And one is that base station you heard -- he
9 didn't want us to parade it around.

10 I don't know how many times we heard in this case
11 from the IV side that this case is about intelligent base
12 stations. We heard it in jury selection. We heard it in
13 openings. We heard it from fact witnesses. I heard it
14 again yesterday. We do agree that this case is about base
15 stations.

16 IV wants to talk about method claims, and they say
17 this is all about method claims, and so you can't look at
18 the base station. It's all about T-Mobile's network and the
19 use of the network. Well, you look at the patent claims,
20 they're happening -- as I said before, they're happening
21 inside the base station. They're not -- they're not
22 happening in cell phones. They're in the base station.

23 And Dr. -- Dr. Tim Williams told us: That's right,
24 they're not happening in cell phones. And he said -- he
25 said -- he sort of towed the company line here and said:

1 It's really the network that's being implemented here.

2 Well, there's only two parts of this network we're
3 talking about. It's the base station and the handsets. And
4 he says: It's -- it's not the handsets where it's
5 happening. So we know it's happening in the base stations.

6 One more point in terms of these three patents
7 and -- and the sort of licenses that -- that IV has been
8 making reference to. They say, oh, we have a license with
9 Nokia or they're a member. Well, these three patents were
10 not any part of those discussions. We know that from
11 Mr. Paschke. He says: These three patents never have been
12 discussed with any potential licensee.

13 Okay. How about how the base stations really work?
14 Mr. Christian Skarby lives in Sweden, was actually on
15 vacation in Australia, and flew here from Australia so that
16 he could tell you folks about how his base station works.
17 And you found out that he was actually deposed for two days
18 by IV in this case, and he was the company's representative
19 on how the -- how the base stations work and why the company
20 thinks they don't infringe.

21 And he -- he told us here about some of the work
22 that he did, and he showed us this document, which is
23 Defendants' Exhibit No. 282. And in this document, he
24 explained that the solution that they had in their base
25 station would use scheduling called DBS, delay based

1 scheduling. And, in particular, it would do no resource
2 allocation for future TTI's.

3 And then he identified a research document that
4 Ericsson had done back in 2007 where they had identified
5 some technical problems with using future allocations.

6 So this guy -- I mean, maybe he looks a little
7 scary to them. He's a super nice guy. He's really smart.
8 He knows his stuff. How many questions did they ask him on
9 cross-examination?

10 Mr. Johan Norrby is Ericsson's company
11 representative. Flew here from Sweden to make sure that
12 y'all understood how important this case is for us. He's
13 been here all week, as has Mr. Skarby.

14 He told about all the work that went into going
15 into the base station, his help in designing that base
16 station, the -- the hundred thousand man years that went
17 into that effort. And he wasn't asked anything about
18 those -- how those products worked. He wasn't asked
19 anything about the patents. IV just didn't want to know.

20 Mr. Stephen Mr. McGrath, T-Mobile's corporate
21 representative, is here. And he made no bones about it. He
22 says: I'm the person at T-Mobile who knows the most about
23 the overall set of facts that are relevant to what we're
24 talking about here in this court.

25 And what they wanted to talk to him about was the

1 -- the un-carrier marketing campaign and the cost of
2 spectrum. That's about it.

3 There was -- there was one person that they -- they
4 couldn't -- couldn't hide the information from getting out
5 of, and that was Dr. Wicker. Dr. Wicker is a professor at
6 Cornell University, and he came, and he explained to us his
7 analysis of having looked at the source code and the
8 operation of the base station, and compared it to the
9 patents.

10 And I'll start with the '206 patent. The '206
11 patent is the patent that IV has identified as the one
12 that's worth half the value out of these three patents.

13 And Dr. Wicker identified a couple of
14 non-infringement bases to you. He talked about one that
15 dealt with the lack of classification based on QoS of the
16 packets themselves.

17 The other one he talked about was the lack of an
18 end-user quality of service requirement being used in
19 classification in the Ericsson base stations, and he
20 explained that when we're streaming Netflix and we get a
21 frozen screen, that can happen because the bandwidth isn't
22 giving us -- or the network is not giving us enough
23 bandwidth.

24 And he had said that, of course, what we'd all like
25 to do is have a button on our phone that we can push and

1 have our phone push out a message to the network that will
2 give our end-user quality of service requirements to the
3 network so that the network would have to give us more
4 bandwidth.

5 And he explained that that sounds good, but from
6 the network's perspective, that's really tough to do because
7 if -- if you get so many demands of everyone wanting the
8 best, the network would be overloaded.

9 So what T-Mobile has to do is look at all the
10 competing demands that it has and figure out its best way to
11 balance the traffic.

12 We saw that it has a particular network QoS
13 requirement for regular Internet traffic, and then how if
14 there's an abusive user or an extreme user, they have the
15 ability, based on their own requirements, to put that
16 traffic down to a lower level so that it -- it's more fair
17 to the whole network and that one or few users that are
18 abusive users don't end up swamping the network.

19 So he explained that it's network quality of
20 service requirements that are used in the Ericsson base
21 stations in the T-Mobile network, not end-user quality of
22 service requirements.

23 There's really no dispute about this.
24 Dr. Tim Williams is the expert for IV. And this is the
25 testimony that he gave us on Tuesday, I believe.

1 We asked him: T-Mobile uses its own network QoS
2 requirements, not end-user QoS requirements, correct?

3 And he said: Yes.

4 So there's not an expert in this case who believes
5 that the Ericsson base stations in the T-Mobile network are
6 using end-user QoS requirements. And for that reason,
7 there's no infringement of this claim.

8 Next, the '629 patent. The '629 patent was the one
9 about reservations. You have to -- not only do you have to
10 have these packets in a consistent order. That's this last
11 Claim Step D. You have to actually reserve slots. You have
12 to actually look out into the future and make a reservation
13 in particular slots. And that's -- that's what was found to
14 be missing in this claim.

15 Dr. Wicker explained that he had looked at the
16 Ericsson documentation, and he had come to the same
17 conclusion that they did, that Ericsson had found that it
18 was a bad idea to reserve slots. That -- that was in
19 Defendants' -- Defendants' Exhibit 277. And that's the
20 technical report that shows you why they thought it was not
21 a good idea and why at the end they concluded we should not
22 do this.

23 He likened it to a restaurant that doesn't take
24 reservations. And I say it. So if Ericsson doesn't use
25 reservations, then how does it figure out how -- how these

1 phones get their turn? He said: It's like a restaurant
2 that doesn't take reservations. You show up and when the
3 network is not overloaded, you get a table right away.

4 And that's why you see regular intervals lots of
5 times, because the Ericsson base station, that box that's
6 designed to handle 8,000 -- just that one card, 8,000 phones
7 at once, is designed to be able to keep up.

8 So you don't end up having these long lines because
9 it can make these super fast decisions. Remember, he told
10 us a thousand decisions a second this thing can make.

11 So it's not surprising that when the restaurant is
12 not that busy -- you know, if I come to the restaurant every
13 Friday at the same time and it's not that busy, I get a
14 table. When it starts to get busy, I'm going to have to
15 wait a little bit. And that's what we saw in the test
16 results.

17 There's one guy in the case on the IV side that
18 looked at the source code. That was Dr. Doug Chrissan. And
19 he looked at the code. He looked at the patent claims, as
20 well.

21 Remember, he did that valuation analysis of the
22 patents. And so he certainly had the ability to put those
23 two together, his analysis of what the patent required, plus
24 his analysis of the source code, and figure out is there
25 infringement in this case. And he testified in court:

1 You're not going to hear that from me. That's not my
2 opinion. I'm not saying there's infringement here.

3 And so what he did is he did just sort of a -- this
4 is the way the system works. He had this diagram. Not on a
5 word on here about reservations. And then what we saw is
6 Dr. Williams took his diagram and -- and just wrote these
7 blue lines on it, and said: Well, here's some reservations,
8 here and here.

9 And he originally had these arguments that, well,
10 it's like a process. Maybe it starts back here, and so
11 since it starts so far back here, it's really kind of
12 looking into the future.

13 But when we cross-examined him on it, he agreed,
14 okay, yeah, the reservation actually isn't ever made until
15 way down here at Time 81. And -- and Time 81 is actually
16 the time that I'm giving the resources out. So there's --
17 it's not in the future at all. There just isn't any
18 reservation. We're -- we're, again, at the spot where both
19 experts agree there are not reservations here.

20 Okay. The last patent is the '517 patent, and this
21 is the one where the Court has given us a construction that
22 we have to follow, and that's the CPE device has to reside
23 on the premises of the customer. And then there's
24 particular examples that are included.

25 And Dr. Wicker showed us what those examples look

1 like. And the thing they have in common is, they are
2 designed to sit somewhere and work. It's a customer
3 premises equipment. It's something that resides on the
4 premise of the customer.

5 Dr. Wicker explained that this is one of those
6 where like we don't probably really need you, Mr. Expert, to
7 tell us this.

8 A mobile phone doesn't reside on the customer's
9 premise, unless, as IV's counsel pointed out, if you take
10 some glue and glue it down and leave it there forever, then
11 maybe we need to think about that, but that's not something
12 that's accused in this case.

13 Regular mobile phones are accused in this case. He
14 talked about this wireless hotspot. That's a mobile device
15 you take with you. It's not something that resides in your
16 home.

17 There's nothing that's accused in this case that
18 isn't mobile. And that's -- that's the opposite of
19 something that resides on the premise of a customer.

20 Okay. So just quick wrap-up -- my takeaways for
21 you on these patents would be -- on that '206 patent,
22 there's no end-user QoS requirements used. Both experts
23 agree.

24 On the '629, there are no reservations, future
25 slots. I think both experts are pretty close to agreeing,

1 or -- or at least having been cross-examined where they
2 don't -- they don't have a disagreement left.

3 And then on this last one, there are no CPE
4 devices.

5 And then the other argument we talked about in that
6 last one was the idea that it had to have a shared wireless
7 bandwidth. And, of course, we saw that the Ericsson base
8 station works with these two chunks of bandwidths that are
9 separated by this space in between. There is no shared
10 wireless bandwidth with the uplink and downlink. It's two
11 separate bandwidths.

12 Okay. Invalidity. The Forslow patent. The
13 Forslow patent was the Ericsson patent that was filed
14 May 29th, 1998.

15 Now, yesterday, it was suggested that, well, hey,
16 that was only six weeks before. And then when you kind of
17 put that together with what we heard in the opening that
18 Dr. Jorgensen, maybe -- maybe he was kind of working on this
19 stuff earlier, maybe the jury will kind of think, huh, maybe
20 Forslow wasn't really before.

21 There's no question about that. The Court
22 instructed us today that the Malibu patent, the '206 patent
23 has a priority date, and it is after the date of the Forslow
24 patent. Ericsson was first. Not really any debating that.

25 So then it's a question of is the United States

1 patent to Forslow, did that disclose the concepts that were
2 in the '206 patent, Claim 9. And the '206 patent, Claim 9,
3 was the idea that you have to classify packets based on
4 end-user quality of service of the packets, and then you
5 schedule those packets for transmission.

6 And you don't have to go very far into Forslow to
7 find those concepts. Just this -- just this paragraph right
8 here, classifying and scheduling packets in accordance with
9 the quality of service corresponding to the application
10 packet stream.

11 And then, of course, Dr. Acampora went into great
12 depth and great detail on this and showed specifically where
13 each claim element was, including that end-user quality of
14 service.

15 Remember, Mr. Forslow's idea from back then was he
16 thought, well, you know, maybe it is a good idea to let the
17 end-users request their quality of service.

18 That -- Ericsson, you heard this -- this week has a
19 lot of patents. You can't practice all of your patents at
20 the same time. This is an old 2G idea. Maybe it was good
21 at one time.

22 They have a patent on it, not using it right now.
23 But it -- it does come before the '206 patent, and it does,
24 as Dr. Acampora showed, show exactly the same concepts,
25 and -- and we believe that by clear and convincing evidence

1 we've shown that that '206 patent is invalid.

2 Next was the Turina patent. If you remember
3 Dr. Acampora's discussion of the Turina patent, we didn't
4 see any -- any specific dis -- discussion today from
5 Plaintiff about this one because this -- this is pretty
6 close. More than pretty close. It's right there.

7 That Turina patent, if you remember, was an old
8 Ericsson patent, a 1996 patent that actually is used in LTE.

9 What we're looking at here is Turina's description
10 of sort of an old concept that it built upon to make a new
11 concept, this control system that's used in LTE.

12 So there is an aspect of Turina that's actually
13 used in LTE. This part of Turina is sort of describing an
14 old concept that it built on.

15 But just because this isn't the actual invention of
16 Turina, it doesn't mean that it's not prior art. It's still
17 described in a patent. And if it's describing the same
18 thing, it invalidates.

19 So here what we see is you've got a current frame,
20 a first future frame, and a second future frame. And you've
21 got reservations of slots that are isochronously placed, and
22 the packets are placed isochronously into those future
23 frames. And that -- there it is.

24 The last reference that was discussed was the --
25 the Magic WAND article. And Dr. Acampora gave a very

1 detailed analysis of that and showed where each and every
2 element of the claims were found there. I'd like to focus
3 on what we saw today, which really what we saw yesterday was
4 pretty amazing.

5 We got done with our case. We'd showed you, we
6 think, why these patents are invalid. And then at that
7 point, normally, the Plaintiff puts on a rebuttal case.

8 They have an opportunity to call their own
9 witnesses, tell us why -- why we're wrong, why is this not
10 invalid. And they waived it. That was -- that was pretty
11 amazing.

12 One witness they could have called was
13 Dr. Tim Williams. Dr. Tim Williams did a report on
14 validity. I was frankly excited to cross-examine
15 Dr. Williams, but they sort of -- they rested.

16 So we're sort of in a situation now where we have
17 shown you evidence of invalidity of these patents, and it is
18 un rebutted. Other than some lawyer argument, it's
19 un rebutted. We think we have shown by clear and convincing
20 evidence that these are invalid.

21 I do want to address this issue of Forslow and
22 Turina being on the face of the patents. We did hear that.
23 And the Judge did give some instructions on how that can
24 color your analysis as you're looking at this.

25 So going back to the timeline, here's a date that

1 you don't -- you haven't really heard before, right? This
2 is what you would have heard if I'd been able to talk to
3 Dr. Williams yesterday.

4 What happened in the '206 patent was you had
5 several years of going through the Patent Office and a
6 patent actually issued and IV owned the patent at that time
7 and then IV decided, you know what, we think there's a
8 problem with the filing date of this patent. So let's put
9 it back into the Patent Office in this re-issue proceeding.

10 And you can see what I'm showing you right here,
11 and this is from Plaintiff's Exhibit 6.

12 They were filing that re-issue to correct a filing
13 date error. Okay. So they put it back into reissue. And
14 at some point during --

15 MR. WARD: Your Honor, I object. He's arguing
16 facts not in evidence. He can talk about the document, but
17 there's no evidence --

18 MR. KUBEHL: There is evidence. It's in the
19 prosecution history.

20 THE COURT: If it's -- if it's not been presented
21 in the trial, whether or not it's in the prosecution history
22 is not evidence in the case.

23 MR. KUBEHL: This prosecution history has been
24 presented in the trial.

25 THE COURT: I'll allow counsel to continue his

1 argument.

2 MR. KUBEHL: Okay. So -- and what we saw, what --
3 what Plaintiff put on the screen was this thing called an
4 information disclosure statement.

5 So that's when you go to the Patent Office, and you
6 say, hey, I know about some prior art. And as we heard
7 yesterday, you do that because you have to do that. If you
8 know about prior art, that's material to patentability. You
9 have to give that to the Patent Office.

10 So they were giving Forslow to the Patent Office
11 through this thing called an information disclosure
12 statement. And here's -- here's what we see there. Forslow
13 is listed there.

14 Now, Forslow wasn't the only reference that they
15 gave to the Patent Office.

16 In that particular information disclosure
17 statement, they gave 107 other references. And then through
18 the course of that re-issue proceeding, they gave a total of
19 367 references to the Patent Office.

20 And in these forms, you can see the date when an
21 examiner considers the references. Forslow was considered
22 on October 20th, 2011. Guess what date the other 366
23 references have as a date considered? October 20th, 2011.

24 The examiner had wrote down the same date for
25 having considered 367 references. So I'd ask you to take

1 that into account when you assess what it means to have been
2 considered and on the face of the patent.

3 IV's counsel has responded to our validity
4 challenge primarily by making arguments that you shouldn't
5 kill, you shouldn't tear up Dr. Jorgensen's patents. And I
6 think we heard it again in the opening. Don't take his
7 patents away.

8 Well, number one, Dr. Jorgensen testified that he
9 doesn't have any interest in these patents anymore. He --
10 he sold that interest long -- long ago. He testified that
11 this is not a case where IV is trying to vindicate his
12 rights. He's on the sidelines.

13 Number two, claims are invalidated, not whole
14 patents. We're seeking to invalidate the claims that they
15 chose to assert against us here, which are a handful of the
16 claims out of all of the claims in these patents. And you
17 all will make your decision on -- on whether we've proven
18 that by clear and convincing evidence and --

19 THE COURT: Counsel, you have nine minutes left. I
20 apologize. The objection occurred over the 10-minute mark,
21 or I would have told you.

22 MR. KUBEHL: Thank you.

23 THE COURT: But you have nine minutes remaining.

24 MR. KUBEHL: Thank you, Your Honor.

25 So we -- we do believe that we have shown by clear

1 and convincing evidence that the two Ericsson patents, as
2 well as the Passas reference, do invalidate the claims that
3 are asserted in this case. And we will ask you on the
4 verdict form to write "yes" to that list of claims that you
5 were shown by Plaintiff.

6 They want you to write "no." We think that the
7 right answer is to write "yes."

8 This is not a David and Goliath story, although IV
9 would -- would want you to think that. IV bought
10 Dr. Jorgensen -- I'm sorry, IV -- IV brought Dr. Jorgensen
11 and asked him questions on direct to make it sound like he
12 was describing his inventions.

13 And then on cross-examination, he acknowledged that
14 his testimony was really not about his inventions in the
15 patents at all.

16 The reality is that IV is a big company.
17 They -- they brought Mr. Paschke to talk about IV's billions
18 of dollars of licensing revenue. IV is one of the largest
19 patentholders in the world. This is a big company. It's
20 not a David and Goliath story.

21 This slide is Dr. -- or Mr. Norrby explaining that
22 base stations are not one size fits all. An Ericsson base
23 station is not a Nokia base station. It's not a Samsung
24 base station. They each have their own designs. They each
25 are proud of their own work.

1 And the fact that there's a Nokia license, which we
2 know from Mr. Paschke's testimony did not involve
3 discussions of any of these asserted patents, has nothing to
4 do with whether the Ericsson base station does or doesn't
5 infringe these three patents.

6 Over the past four days, we've showed you documents
7 that IV didn't want you to see. I think we've pulled back
8 the curtain on IV's business. We've showed you what they
9 paid for the patents. We've showed you internally what they
10 expected to fairly receive on the patents. And we've showed
11 you just how much value IV has put on these three patents
12 across all 70 of their licenses.

13 What IV is asking for here today is 700 times the
14 total amount of revenue that they have ever collected across
15 these 70 license agreements.

16 IV is also asking you to have us pay damages on a
17 per person, per month basis of the use of a phone and not
18 based on the use of the base station. And that type of
19 agreement is not something that IV has ever entered into.
20 It's not something that Ericsson has ever entered into.
21 It's not something that T-Mobile has ever entered into.

22 At the end of the day, we believe that the proper
23 answer to the damages question should be zero. We don't
24 infringe, and the patents are invalid. And we believe the
25 number should be zero.

1 The Ericsson and the T-Mobile folks that I've had
2 the privilege to work with, I think, are -- are so
3 fantastic, hard working, unbelievable people.

4 And I really hope that over this week that you've
5 been able to see a little bit of what we see when we work
6 with them.

7 I want to thank you all for being objective, for
8 all the hard work that you've done this week. You have
9 taken so many notes, been so attentive. We could not have
10 asked for anything more. So on behalf of myself, on my
11 co-counsel, our clients, our staff, thank you very much.

12 THE COURT: All right. Plaintiffs may now present
13 their final closing argument. You have 17 minutes
14 remaining. Would you like a warning on your time?

15 MR. WARD: If I could have a two-minute warning,
16 Your Honor.

17 THE COURT: I will give you a two-minute warning.
18 You may proceed when you're ready, counsel.

19 MR. WARD: Thank you.

20 It seems like a long time ago that I talked to you,
21 but it was just Monday. We've packed a lot of evidence in,
22 and you all have been attentive. And I, too, want to thank
23 you.

24 You didn't volunteer but you showed up, and you've
25 served, and for that, I do thank you. Because I know we've

1 taken you away from your businesses, away from your -- your
2 lives and your families and things that you -- you need to
3 be doing, but you figured out, too, that this dispute is not
4 going to get resolved without you all deciding it.

5 Mr. Kubehl said, well, we could have filed this
6 case up in Seattle. We'd done that, they'd say, oh, you
7 should have sued Ericsson. It's not our fault. We've sued
8 Ericsson down here. They'd said, oh, it's not our fault.
9 It's T-Mobile's fault. They're good at passing the buck.

10 So we've got them both in one spot where they've
11 got to sit at the same table.

12 I'm going to remind you of this because there's --
13 I told you these were going to be things that you saw play
14 out in this case, and I didn't know how -- how much you
15 would see them, but we're going to talk about them.

16 They talked about how T-Mobile -- this is a
17 T-Mobile document -- how the rest of the industry is stupid
18 and broken, how T-Mobile doesn't have to play by the rules.
19 And I know they're talking about in business. But they
20 don't think the rules apply to them anywhere, because you've
21 got to ask yourself, if what Mr. Kubehl just told you was
22 true, would we be sitting in this courtroom?

23 If IV's experts were in agreement with the
24 Defendants' experts that things don't infringe, do you think
25 that we would be standing in this courtroom?

1 You are the sole judges of the credibility of the
2 witnesses and the evidence. That's what you were just
3 instructed. So I'm not going to be diving too deep into the
4 technology. Number one, that's not my forte.

5 But, number two, you all have been listening to it
6 all week, and I think you probably have a good idea about
7 how these things work. But I do want to give you some
8 information that will help you make this decision about who
9 do we trust?

10 You were presented with diametrically opposing
11 opinions on infringement and damages, and I'll talk to you
12 about validity, too. I'm looking forward to that.

13 I'm not going to stand up here and call anyone a
14 liar or a perjurer. That's improper. That's your job. You
15 all get to make that decision.

16 You've seen this document. We told you about
17 T-Mobile's problems with their network, that they were
18 running out of spectrum.

19 You've seen that going to the VoLTE increased the
20 throughput by a factor of 10X. You all know this technology
21 was successful, and it's not VoLTE.

22 Our technology enables them to put the voice in the
23 same data pipe, to have a high quality wireless network from
24 these intelligent base stations.

25 You've seen this document, "Why VoLTE?" Because

1 it's technically and economically superior.

2 Did you find it interesting that when I was
3 cross-examining Dr. Becker yesterday, he really started
4 studying this document. Their damages expert.

5 It certainly appeared to me that he had not seen it
6 before. And when I asked him that, he said: Well, no, I've
7 seen it this week.

8 Their damages expert for first time during this
9 trial, whether it was yesterday or Monday, figures out that
10 internally T-Mobile is saying that this technology is
11 technically and economically superior.

12 Think about that because we know that their
13 subscribers went through the roof. We know that their
14 profits tripled. Mr. Bratic told you that. We know what
15 they were telling the world. They were talking about the
16 implementation of new technologies, how it enabled them to
17 expand their capacity by re-farming existing spectrum,
18 moving voice traffic to VoLTE frees up spectrum, and how
19 they became the leader in the rate of adoption of VoLTE.

20 And this one is a little bit hard to read. It's
21 Plaintiff's Exhibit 184 at 25. But I've been telling you
22 billions and billions of dollars is what this spectrum cost.

23 If you want to confirm it, every witness has
24 confirmed it, but this gives you an idea. It says: The
25 cost of spectrum is high, bids -- this is talking about

1 auctions -- total to almost \$20 billion in the 2008
2 700 megahertz auction.

3 And then in 2014, bids topped \$43 billion. This
4 stuff is expensive. They want to maximize their use of it.

5 Now, let's talk about who was asked questions and
6 who wasn't. They told you: Well, we brought Mr. McGrath.
7 We had Mr. Norrby sitting here.

8 Remember when I asked Mr. McGrath, if he's the
9 person -- Mr. Kubehl just said: He knows more about this
10 than anybody. Well, he's a lawyer. And he knows the rules
11 require that if you know more about it than anybody, then
12 you get disclosed as an individual with knowledge of
13 relevant facts.

14 He wasn't ever disclosed as an individual with
15 knowledge of relevant fact. He's a nice guy. They brought
16 him down here and sat him up on the stand.

17 Did they ask him a single question that
18 contradicted anything that we presented in the evidence or
19 that we presented in the document while cross-examining him?
20 Not one thing. He confirmed everything we said.

21 They had to have it. Saved them billions of
22 dollars in spectrum. They were running out of it. He
23 didn't dispute one thing, and they're going to criticize us
24 for not asking the right questions? What am I supposed to
25 ask him.

1 Then they say Mr. Norrby -- Mr. Norrby could have
2 told them. He was their witness. He's been sitting at the
3 table. They didn't ask him any questions. What are we
4 supposed to ask him? Why didn't you tell him anything that
5 contradicted what the Plaintiffs have said? But you did
6 learn that there's indemnity agreement. That's why they're
7 over here trying to keep the damages down because Ericsson
8 is footing the bill.

9 And you're right, this is not a case about David
10 and Goliath. I'm not sitting here saying that IV is some
11 small company.

12 We proved infringement, and they brought you
13 Dr. Wicker who has testified for Defendants non-stop. And
14 Mr. Black cross-examined him. And you all were here. You
15 all got to see what happened during that cross-examination.
16 And they did exactly what I told you they'd do during
17 opening.

18 Remember, I said they don't really feel strongly
19 about this non-infringement position because they're going
20 to switch horses in the middle of trial, and switch horses
21 they did. Not to a very good one, but they switched to
22 Dr. Acampora who tried to convince you -- and I felt sorry
23 for you because I couldn't even follow it, his presentation
24 of what was supposed to be clear and convincing evidence.

25 And you heard me just object about facts outside

1 the record because he was showing you this information
2 disclosure statement, and then he told you those references
3 that Dr. Acampora relied upon that are on the face of two of
4 the patents before the examiner were provided by IV.

5 And they said: Oh, but the date -- date on the
6 form. This is the same date. There's no evidence in the
7 record of when that examiner examined these references.
8 There's just evidence of the date that the examiner signed
9 the form.

10 Is that playing by the rules? They don't play by
11 the rules outside this courtroom. They don't play by the
12 rules inside this courtroom.

13 Let's talk about what does apply in this courtroom,
14 and that's the law. And Dr. Becker had to admit what he
15 didn't show you, what Mr. Bratic did, that damages are to be
16 no less -- and no less than a reasonable royalty for the use
17 made of the invention by the infringer. They don't want to
18 talk about that, do they?

19 They didn't present any testimony that there was
20 any other way to do this than Dr. Jorgensen's inventions
21 that are now owned by IV.

22 What they want to talk about is R allocations and
23 the investments made by IV. And it got me thinking, we're
24 talking about a method that T-Mobile uses to maximize its
25 spectrum. There's an analogy here.

1 Think about oil and gas business of Halliburton and
2 -- and Exxon-Mobil get together and there's a method for
3 rapidly extracting gas -- oil and gas from the ground. And
4 Halliburton sells the drilling rig. Exxon uses it and pumps
5 out millions and millions of dollars. Makes millions of
6 dollars from that -- use of that patented method. They
7 going to look at Halliburton and say, oh, well, you've got
8 to collect some portion of the drilling rig. Don't look
9 at -- don't look at Exxon. We used it all. We put the
10 method together. We customized it for our use. We saved
11 billions. We made millions. But don't -- don't look at
12 that. Look at what the -- the -- what Halliburton did. It
13 makes no sense.

14 You look at the use of the infringing technology.
15 They want to attack Dr. Jorgensen. Mr. Black went through
16 his qualifications. I'm not going to go through them again.
17 They call him a liar in open court because he was paid
18 \$300.00 an hour.

19 And then, lo and behold, what do we learn about the
20 Defendants' experts? They're getting paid \$725.00 an hour,
21 \$750.00 an hour. And that's fine. Multiples of what they
22 make as university professors, but somehow Dr. Jorgensen is
23 a liar.

24 Was he lying when he told you all about how he got
25 in his car and he drove around and he -- he was using this

1 technology? He was excited to tell you all that. Yet now
2 they want to spin around and say, oh, no this has to be
3 anchored in the house. Because they've got to make you
4 believe he's a liar. That's what they've got to make you
5 believe. They get called down for it. They'll apologize to
6 the Court. But they won't apologize to Dr. Jorgensen.

7 They won't say anything good about anybody but
8 T-Mobile and Ericsson. Boy, they're smart. They've got
9 good inventors. And they do. They have good patents.
10 Nothing good about Dr. Jorgensen's past, his present, IV.

11 How do you think Dr. Jorgensen would have faired if
12 he showed up at T-Mobile's door, here's my patent. How do
13 you think he would have faired? About as well as IV fairs.
14 We're not an individual inventor. We are not David. We're
15 right there in the same league with them. You see how they
16 treat us. And you know how they treat individual inventors
17 because they can't present a single license that they have
18 ever paid anyone money for anyone else's technology. All
19 they talk about is their awards, how great they are.

20 Mr. Bratic, the only expert who actually looked at
21 licenses to LTE technology, he looked at it. He had to go
22 to Ericsson licenses. And I don't think they thought about
23 this.

24 Remember, they were telling you about -- this is
25 Mr. Kubehl in opening, talking about Ericsson in 2014 and

1 this European Patent Office award.

2 And I'm sure they're great inventors, they're great
3 guys. They have valuable patents. And he told you
4 Ericsson -- Ericsson wasn't -- wasn't one of several
5 companies that were recognized for this. They were the
6 company in LTE that was recognized for this. And I'm sure
7 they were.

8 But you know what they didn't cross-check? They
9 didn't cross-check these names with the patents that they
10 said were representative of the value of their property
11 because those super star inventors that we said had
12 comparable technology that Dr. Chrissan made his comparison
13 with, they show up on the face of half of the
14 patents -- half of those 18 patents. Their super star
15 inventors. You think we picked the right patents to compare
16 to? You think they wish they'd cross-checked it now?

17 So they brought Ms. Chen, a very nice lady. And
18 she -- she did what she had to do. She said: No, no,
19 they're not representative.

20 But then Ms. -- Ms. Henry said: Well, now wait a
21 minute. Let me show you some of these sworn declarations
22 before -- before your ox was in a ditch, and let's see what
23 you were saying outside of this courtroom. Somewhere else
24 you swore that they were representative.

25 They're going to say what suits them at the time

1 because the rules don't apply to T-Mobile and Ericsson.
2 That's what they think. That's what they think. Because
3 T-Mobile is the un-carrier. Remember that? And now you've
4 seen they are unwilling to respect our property. They're
5 unwilling to pay for using it. They're unwilling to even
6 acknowledge that it has any value.

7 THE COURT: Two minute remaining.

8 MR. WARD: They talk like IV -- like it's some
9 second class citizen because it doesn't make a product.
10 You all saw the list of companies that have invested in IV.

11 They want you to believe that after Verizon pays
12 110 million for a license, invests \$250 million in this
13 company. I'm not going to say what AT&T paid. You all
14 remember it. I can't say it in open court. That IV would
15 get locked in a room in this hypothetical negotiation and
16 walk out with \$110,000.00 with these companies finally
17 having to admit that the patents are valid and infringed.
18 Give me a break. That's what they want you to believe.
19 They start out talking about money. It's about money.

20 There's going to be a phone call made when you all
21 come back with a verdict. You're going to pass it up. The
22 Judge will inspect, and Ms. Lockhart will read it out. And
23 they're going to scurry outside -- outside the courthouse
24 and grab their phones. And it's going to go one of two
25 ways. Mr. Legere -- Mr. McGrath is making this call to the

1 CEO -- we got away with it. We broke the rules. We're the
2 un-carrier. Everyone else is stupid. Keep on trucking. We
3 don't have to pay for using people's property.

4 Or it could go another way. Mr. McGrath could say,
5 they figured it out. We threw up lots of smoke screens,
6 lots of defenses, but they figured it out. And we might
7 want to change the way that we do business and start
8 respecting property.

9 You all get to decide which one of those phone
10 calls gets made.

11 Thank you for your time, and we look forward to
12 receiving your verdict.

13 THE COURT: All right. Ladies and gentlemen,
14 you've heard closing arguments for the attorneys for the
15 parties. I now have a few final instructions to give you
16 before you begin your deliberations.

17 You must perform your duty as jurors without bias
18 or prejudice as to any party. The law does not permit you
19 to be controlled by sympathy, prejudice, or public opinion.

20 All parties expect that you will carefully and
21 impartially consider all the evidence, follow the law as
22 I have given it to you, and reach a just verdict, regardless
23 of the consequences.

24 Answer each question in the verdict form from the
25 facts as you find them to be in this case, follow the

1 instructions -- following the instructions that the Court
2 has included and given you.

3 Do not decide who you think should win and then
4 answer the questions accordingly.

5 Again, ladies and gentlemen, your answers and your
6 verdict in this case must be unanimous. You should consider
7 and decide this case as a dispute between persons of equal
8 standing in the community, equal worth, and holding the same
9 or similar stations in life.

10 This is true in patent cases between corporations,
11 partnerships, and individuals. A patent owner is entitled
12 to protect his or her rights under the laws of the United
13 States. This includes bringing a suit in a United States
14 District Court for money damages for infringement.

15 The law recognizes no distinction among types of
16 parties. All corporations, partnerships, and other
17 organizations stand equal before the law regardless of their
18 size and regardless of who owns them, and they are to be
19 treated as equals.

20 Now, when you retire to the jury room to deliberate
21 on your verdict, as I've told you, you will each have a copy
22 of this final jury instruction or the Court's charge to the
23 jury to take with you.

24 If during your deliberations you desire to review
25 any of the exhibits which the Court has admitted into

1 evidence over the course of the trial, then you should
2 advise me by written note, signed by your foreperson, and
3 delivered to the Court Security Officer. I will then send
4 that exhibit or those exhibits to you.

5 Once you retire, you should select your foreperson
6 and then conduct your deliberations.

7 If you recess during your deliberations, follow all
8 the instructions that the Court's given you about your
9 conduct during the trial.

10 After you have reached your verdict, your
11 foreperson is to fill in the unanimous answers to the
12 questions on the verdict form, date it, sign it, and notify
13 the Court Security Officer.

14 Do not reveal your answers until such time as you
15 are discharged, unless otherwise directed by me. And you
16 must never disclose, ladies and gentlemen, to anyone, not
17 even to me, your numerical division on any question.

18 Any notes that you've taken over the course of the
19 trial are aids to your memory only.

20 If your memory should differ from your notes, then
21 rely on your memory and not your notes. The notes are not
22 evidence. And a juror who has not taken notes should rely
23 on his or her independent recollection of the evidence and
24 not be unduly influenced by the notes of other jurors.

25 Notes are not entitled to any greater weight than

1 the recollection or impression of each juror about the
2 testimony.

3 If you want to communicate with me at any time
4 during your deliberations, you should give a written message
5 or question to the Court Security Officer, signed by your
6 foreperson, who will then -- the Court Security Officer will
7 bring it to me. I'll then respond as promptly as possible,
8 either in writing or by having you brought back into
9 courtroom where I can address you orally.

10 I will always first disclose to the attorneys in
11 the case your question and my response before I answer any
12 question.

13 After you have reached a verdict and I have
14 discharged you from your service as jurors, you're not
15 required to talk with anyone about your service in the case.

16 But by the same token, as I told you the first day,
17 at that point when you are discharged, you will be free to
18 discuss your service in the case or anything about it if you
19 choose to. The choice in that regard, ladies and gentlemen,
20 after you are discharged, will be totally yours. It will be
21 totally up to you.

22 I'll now hand one clean copy of the verdict form
23 and eight copies of these final jury instructions to the
24 Court Security Officer to deliver to you in the jury room.

25 Ladies and gentlemen of the jury, you may now

1 retire to the jury room to conduct your deliberations. We
2 await your verdict.

3 COURT SECURITY OFFICER: All rise.

4 (Jury out.)

5 THE COURT: Be seated, please.

6 Counsel, you are welcome to wait here in the
7 courtroom for the jury's verdict to be returned. You're
8 also welcome to wait offsite as long as you are close enough
9 by where you can be here promptly.

10 If you are not waiting in the courtroom, you should
11 make sure that my law clerks have an accurate cell phone
12 number where you can be reached if the Court receives a
13 question or if the jury returns a verdict.

14 Pending a question from the jury or a return of
15 their verdict, the Court stands in recess.

16 COURT SECURITY OFFICER: All rise.

17 (Recess.)

18 (Jury out.)

19 COURT SECURITY OFFICER: All rise.

20 THE COURT: Be seated, please.

21 All right. Counsel, we've received two notes from
22 the jury. I'll address Note No. 1 first and then the second
23 note.

24 Note No. 1 is dated today's date, and it reads as
25 follows:

1 Can we have Forslow and Turina patents, as well as
2 DX-520, 481, 482-485, 492, 331, 577, 576, 574, PX-396,
3 PX-331, PTX-1464, 1466, 324, 52, 53, and 57.

4 Then the note continues: We need Chrissan's source
5 code analysis and Ericsson's base station operation.

6 It's signed by Ms. Rambin, Juror No. 8, who I
7 presume is the foreperson.

8 If counsel will approach, I have two copies for
9 each side -- Xerox copies of the note.

10 And for the record, I will mark the original
11 Note No. 1 with a "1" in the upper right-hand corner and
12 deliver it to the court -- courtroom deputy.

13 Counsel, we've pulled most of these
14 specifically-identified exhibits already.

15 What we have not done is deal with the request in
16 the bottom right of the note regarding Dr. Chrissan and the
17 source code analysis and base station operation.

18 If there are specific exhibits that relate to that
19 that are not called out in the note that both sides can
20 agree should be sent back, I will consider that.

21 Otherwise, I'm inclined to tell the jury that the
22 testimony of Dr. Chrissan regarding the source code analysis
23 and the base station operation are matters that they'll have
24 to rely on their memory of his testimony in regard to.

25 And I'd like both sides to consult with each other

1 about the exhibits that we've already pulled together and
2 the language that I just mentioned on the note, and let me
3 know if you think we have a complete response that is
4 without objection we -- I can send back to the jury.

5 Now, before we do that, though, I'm going to read
6 you Note No. 2.

7 Note No. 2 is signed by Ms. Rambin. It's dated
8 today's date. And it says:

9 Can we have Jorgensen and Skarby's testimonies?

10 In regard to this note, which I'll mark with a "2"
11 and give to the court -- courtroom deputy, I've prepared the
12 following response, and I'd like counsel's comments on that.

13 Members of the jury, in response to your second
14 jury note regarding the testimonies of Jorgensen and Skarby,
15 you will have to rely on your memories of the evidence which
16 these witnesses gave from the witness stand.

17 As I told you earlier, the transcript of their
18 testimony will not be available for you to use during your
19 deliberations.

20 That's my proposed response to Note No. 2.

21 If somebody from each side would approach, I have
22 another two copies of this second note that you may have,
23 two for each side.

24 MS. SMITH: Thank you.

25 THE COURT: Let's take the easy -- easiest one up

1 first.

2 Does anybody have an objection to the proposed
3 response from the Court to Note No. 2?

4 MR. WARD: No, Your Honor.

5 MR. KUBEHL: No, Your Honor.

6 THE COURT: All right. Now, with regard to
7 Note No. 1, I'm going to hand the court -- courtroom deputy
8 the stack of exhibit files that we've preliminarily pulled.

9 The note also requests the Forslow and Turina
10 patents, and I don't think we have those exhibits in this
11 stack. We have pulled what we can identify from the
12 specifically-identified exhibit numbers that are in this
13 note.

14 I'd like both sides to meet and confer about what
15 we've pulled, agree on anything else that needs to be added
16 to it, and then I'd like to hear from you on how you think
17 best to respond to the request regarding
18 Dr. Chrissan's -- what I can only assume to be his testimony
19 regarding source code and base station operations.

20 So with that, we'll go off the record and afford
21 each side a chance to meet and confer with the other.

22 When you're ready to come back on the record, we'll
23 do that and see where both sides are.

24 We're off the record.

25 (Off the record discussion.)

1 THE COURT: All right. We're back on the record.

2 We've had a discussion between the parties' counsel
3 and the Court about how to best and most accurately respond
4 to Jury Note No. 1.

5 Based on that discussion, it's the Court's
6 understanding that counsel for all the parties would at this
7 juncture prefer to send back responsive specific exhibits to
8 the request for the Forslow and Turina patents, as well as
9 the specified Plaintiff's and Defendants' Exhibits that were
10 named by number in the note, with two exceptions, DX-520 and
11 PX-331.

12 With regard to the -- with regard to those two
13 exhibits, counsel for both sides have requested more time to
14 review it and discuss with each other how best to respond to
15 the jury's request. And my initial response to the jury in
16 this case would be to tell the jury: We are considering
17 those two exhibits, and I'll respond to them subsequently.

18 With regard to the language that's handwritten near
19 the end of the first jury note about Dr. Chrissan, it's my
20 understanding that both sides agree that the proper response
21 would be to send back the folders of source code that he had
22 on the witness stand with him when he gave his testimony.

23 Is that correct?

24 MR. WARD: That's correct.

25 MR. KUBEHL: Yes.

1 THE COURT: And do we have those identified in some
2 specific way?

3 MR. WARD: They're Plaintiff's Exhibit 892 and 893.

4 THE COURT: All right. So we would send them those
5 two Plaintiff's exhibits and the others that are specified,
6 except the two that we're going to hold out and let you all
7 figure what to do with it.

8 DX-520 and PX-331, based on discussions, appear to
9 be in native format. They've been reduced to disks or DVDs.
10 The parties are not sure, given the width of the actual
11 original documents, if they're easily printable.

12 I'll respond to the jury's note with those two
13 exceptions as indicated, and then once the parties have had
14 a chance to further review DX-520 and PX-331, the Court
15 intends to have another discussion with counsel off the
16 record.

17 And then assuming that we can arrive at an
18 agreement and a consensus on how best to respond, I'll note
19 that on the record. And then whatever the result or
20 solution is, we'll send that back to them at that time.

21 Does that sound agreeable to both Plaintiff and
22 Defendant?

23 MR. WARD: Fine from Plaintiff.

24 MR. KUBEHL: Yes, sir.

25 THE COURT: I will do this. I'll have my staff

1 make sure that we have the actual exhibits that are going to
2 go back now, and then I will work on a written response to
3 Juror Note No. 1. I'll come back and read that to counsel
4 and get your approval before I send it, along with the
5 specific exhibits, to the jury.

6 While I'm working on that response and while staff
7 is confirming that we have the right exhibits pulled that
8 are specified in the note, except DX-520 and PX-331, we'll
9 stand in recess.

10 COURT SECURITY OFFICER: All rise.

11 (Recess.)

12 COURT SECURITY OFFICER: All rise.

13 THE COURT: All right. Have a seat, please.

14 Let's go off the record again.

15 (Off the record discussion.)

16 THE COURT: While we've been off the record, we
17 have reviewed the requested exhibits requested in Jury
18 Note No. 1, and the parties have agreed to the specific
19 exhibits that correspond with the requested exhibit numbers.

20 The parties have agreed that DX-49 is the Turina
21 patent, and DX-52 is the Forslow patent.

22 The parties have agreed with regard to the written
23 request concerning Dr. Chrissan's source code analysis and
24 Eric -- Ericsson base station operation, to send in PX-892
25 and PX-893.

1 And then with regard to PX-331 and DX-520, the
2 parties have agreed to have those native files on disks
3 shown to the jury by way of a monitor and disk player that's
4 been demonstrated in the courtroom by the Court's IT
5 personnel.

6 The parties also have agreed that if once the disk
7 player and monitor are sent into the jury regarding those
8 two exhibits, PX-331 or DX-520, if the jury requires any
9 assistance in operating the player or maneuvering through
10 the disk contents, that they can request the assistance of
11 Mr. McNeill, the Court's IT employee, who has been
12 instructed simply to address any operational questions they
13 might have about the equipment and nothing else.

14 Is that all correct, Plaintiff?

15 MR. WARD: Plaintiff agrees.

16 THE COURT: Defendant?

17 MR. KUBEHL: Defendant agrees.

18 THE COURT: All right. If you'll -- if you'll both
19 approach, I have one clean copy of a revised written
20 response to Jury Note No. 2.

21 I think it sets forth what I've just said, but if
22 you'll look at it, and let me know on the record if you have
23 any objections to this written response -- to
24 Jury Note No. 1, I'm sorry. I said 2, I meant 1.

25 MS. HENRY: No objection from Plaintiff, Your

1 Honor.

2 MS. SMITH: None from the Defendants, Your Honor.

3 THE COURT: All right. You've already reviewed the
4 response to Jury Note No. 2. You've agreed to it on the
5 record, and I've already signed the written response.

6 I'm going to give the original response to
7 Jury Note No. 1 and original response to Jury Note No. 2,
8 along with the identified files that have been pulled and
9 the source code files that relate to PX-892 and 893 to the
10 Court Security Officer to be delivered to the jury.

11 And I'll direct Mr. McNeill to deliver the visual
12 aid screen and disk player with the burned disk installed
13 regarding PX-331 and DX-520 to the jury room.

14 If you'll come around, Ms. Denton, Ms. Lockhart has
15 got it all put together. Please take that to the jury, and
16 then Mr. McNeill will wheel the monitor and disk player
17 around and take it into the jury room, as well.

18 If you'll do that at this time, Mr. McNeill.

19 And that should effectuate a response to both
20 Jury Note No. 1 and Jury Note No. 2.

21 Barring another note or the return of a verdict,
22 counsel, we stand in recess.

23 COURT SECURITY OFFICER: All rise.

24 (Recess.)

25 (Jury out.)

1 COURT SECURITY OFFICER: All rise.

2 THE COURT: Be seated, please.

3 Counsel, we've gotten a third note from the jury.
4 I'll mark it as No. 3 and hand the original to the courtroom
5 deputy.

6 I have two copies for each side if you want to
7 approach and pick up some copies. Ms. Lockhart will give
8 them to you.

9 I'll read the rather short note into the record,
10 and then we'll discuss it.

11 The note reads as follows: We need the diagram of
12 Ericsson's base station and the diagram of Jorgensen's base
13 station.

14 Signed by Ms. Rambin as foreperson and dated
15 today's date.

16 I'm assuming these may be demonstratives or
17 included in experts' reports. I'm open to suggestions as to
18 how best to respond.

19 MR. WARD: Your Honor, you want us to confer before
20 we --

21 THE COURT: Let's go off the record.

22 (Off the record discussion.)

23 THE COURT: From our off the record discussion, it
24 appears that both sides believes this is a request for
25 demonstratives and does not relate to admitted evidence that

1 I can send back to the jury.

2 Is that right, Plaintiff?

3 MR. WARD: That's correct.

4 THE COURT: Is that right, Defendant?

5 MR. KUBEHL: Correct.

6 THE COURT: All right. Let me do this, I'm going
7 to ask you all to remain in the courtroom. I'll step down
8 briefly and try to write a very short response to the jury
9 that embodies that. I'll be back, read it into the record,
10 get your approval, and then we'll send it to the jury.

11 I'll be back in a minute.

12 COURT SECURITY OFFICER: All rise.

13 (Recess.)

14 COURT SECURITY OFFICER: All rise.

15 THE COURT: Be seated, please.

16 Counsel, if you'll approach, I have a copy of this
17 proposed written response for each side.

18 Let me read it into the record, and then I'll see
19 if you have any responses.

20 Members of the jury, in response to your third jury
21 note, it appears to the Court and to counsel for the parties
22 that what you are requesting are demonstratives that were
23 used with certain witnesses when they testified. As I have
24 instructed you, demonstratives are not evidence, but the
25 testimony of a witness while using a demonstrative,

1 sometimes called a jury aid, is evidence. However, you must
2 rely on your memory of that evidence.

3 Plaintiff have any objection to me sending that
4 written response back to the jury?

5 MS. HENRY: May we have one moment, Your Honor?

6 No objection, Your Honor.

7 THE COURT: Defendant?

8 MR. KUBEHL: No objection.

9 THE COURT: All right. Ms. Denton, I'll hand you
10 the original written response for you to return and deliver
11 to the jury.

12 All right. Counsel, pending another note or a
13 return of a verdict, we stand in recess.

14 COURT SECURITY OFFICER: All rise.

15 (Recess.)

16 COURT SECURITY OFFICER: All rise.

17 THE COURT: Please be seated.

18 Counsel, I've received the following note from the
19 jury:

20 We have a verdict.

21 Signed by Mary Rambin, Juror No. 8, who is our
22 apparent foreperson.

23 Let's bring in the jury, please.

24 COURT SECURITY OFFICER: All rise.

25 THE COURT: Ms. Lockhart, I'll hand you the note

1 for the file.

2 (Jury in.)

3 THE COURT: Please be seated.

4 Ms. Ramin, I understand you're the foreperson of
5 the jury; is that correct?

6 THE FOREPERSON: Yes, sir.

7 THE COURT: Has the jury reached a verdict?

8 THE FOREPERSON: We have.

9 THE COURT: Would you hand the signed and dated
10 verdict form to the Court Security Officer, who will bring
11 it to me?

12 Ladies and gentlemen, I'm going to announce the
13 verdict into the record at this time. I'm going to ask each
14 member of the jury to listen very carefully because after
15 I've done that, I'm going to ask each of you if this is your
16 verdict so that we can confirm on the record that it is the
17 unanimous verdict of all eight members of the jury.

18 Turning to the verdict form, beginning on Page 3
19 wherein Question 1 is found: Did Plaintiff, Intellectual
20 Ventures, prove by a preponderance of the evidence that
21 Defendants have infringed any of the asserted claims of the
22 patents-in-suit?

23 As to Defendant, T-Mobile, the answer is yes.

24 As to Defendant, Ericsson, the answer is yes.

25 Turning to Page 4 of the verdict form wherein

1 Question 2 is located: Did the Defendants, T-Mobile and
2 Ericsson, prove by clear and convincing evidence that any of
3 the following asserted claims are invalid?

4 There under each of the asserted claims of the
5 three patents-in-suit are listed, and with regard to each
6 claim of the asserted patents, the jury has answered: No.

7 Turning then to Page 6 where Question 3 of the
8 verdict form is found: What sum of money if paid today has
9 Intellectual Ventures proven by a preponderance of the
10 evidence would compensate Intellectual Ventures for the
11 infringement you have found in Question 1?

12 With regard to Defendant, Ericsson, the number
13 is \$9 million.

14 With regard to Defendant, T-Mobile, the number is
15 \$34 million.

16 Turning to the seventh and final page of the
17 verdict form, I find that it is dated with today's date, and
18 it is signed by Ms. Mary Rambin as foreperson of the jury.

19 Ladies and gentlemen, let me poll you at this time
20 and make sure that this verdict unanimously reflects the
21 decision of all eight members of the jury.

22 If this is your verdict as I have read it, would
23 you please stand at this time?

24 (Jury polled.)

25 THE COURT: Thank you. Please be seated.

1 Let the record reflect that each member of the jury
2 immediately stood and rose in response to the Court's
3 question confirming that this is, in fact, the unanimous
4 verdict of all members of the jury.

5 I will hand the original executed verdict form to
6 the courtroom deputy to be included in the papers of this
7 case.

8 And the Court accepts your verdict.

9 Ladies and gentlemen, this now completes the trial
10 of this case. And from the very beginning, I have
11 instructed you over and over about not discussing the case
12 with anyone and only discussing it among yourselves once you
13 had heard all the evidence and retired to deliberate.

14 I'm releasing you from that instruction. I'm
15 releasing you from all the instructions as your service as
16 jurors has now come to an end. That means you're free to
17 talk about your service in this case with anyone you would
18 like, and by the same token, you're also free not to mention
19 it to anyone that you would not like to mention it to.

20 Let me explain to you that the practice in this
21 court has been for more years than I can remember that when
22 a verdict is returned in a case like this and accepted by
23 the Court and the jury is discharged, that if the jury wants
24 to talk about their service with any of the lawyers, they're
25 free to initiate a conversation and talk about it.

1 On the other hand, if they don't want to discuss
2 it, they're not required to in any way, and the lawyers
3 cannot initiate a conversation with you about your service
4 in this case.

5 If there's going to be a conversation, you'll have
6 to initiate it -- initiate it. They're not able to do that.

7 Now, by the same token, I will tell you that. I
8 expect that you will find them somewhere near the front
9 steps of the courthouse so that when you leave, you'll have
10 to walk by them to get to your cars. That's what I used to
11 do when I was in practice here.

12 And if you want to talk, they'll be available for
13 you to stop and talk to. If you don't, simply walk past,
14 and go to your vehicles and do whatever you want to do. The
15 decision is yours and yours alone.

16 I will mention to you that I'm not unaware that the
17 weather has changed much for the colder in the last day, and
18 I don't expect anybody to want to stand around and talk on
19 the sidewalk this late in the afternoon on a cold Friday.

20 Consequently, I've asked both the lead counsel for
21 the national firms and the lead counsel for the local firms
22 on each side of the case to give me a cell phone number, and
23 I have copies of that, and I will give that to you in just a
24 minute, and if at some later date you want to call one or
25 more or all of those lawyers and discuss the case and your

1 service, you'll have a cell phone number that they'll
2 answer, and you can do that.

3 By the same token, if you don't want to do that,
4 you're under absolutely no obligation to, and you don't even
5 have to take the cell phone numbers with you if you don't
6 want to. It's strictly 100 percent up to you.

7 I know the lawyers are interested in your
8 impressions of the evidence and the trial and their conduct.
9 And I know they'd be interested in feedback from you, but,
10 again, ladies and gentlemen, that is strictly 100 percent
11 your decision and your decision only. You are free to do
12 it, but you are under no -- no obligation, no compulsion to
13 do it whatsoever.

14 Also, ladies and gentlemen, I want to let you know
15 how much the Court appreciates your service in this case.
16 This has been a difficult trial. It's taken a lot of time.
17 It's taken you away from your work and your families. We've
18 stayed late.

19 I find in my experience in this part of the country
20 that jurors would rather stay late and be away from their
21 families fewer days than be away from their work and their
22 families more days but quit at an early time each day. And
23 so we've stayed late to get this trial complete. And you
24 have rendered a very real and important public service by
25 serving on this jury.

1 As I told you when the jury was selected, in my
2 personal opinion, the second highest form of public service
3 is that any American citizen can render for their country,
4 and that's worthy of appreciation and an expression of
5 appreciation and gratitude for the service that you've
6 rendered.

7 Our constitutional system, which requires and
8 allows for those guarantees that I mentioned to you when you
9 were first selected, including the Seventh Amendment of the
10 Constitution and the Bill of Rights that guarantees a right
11 to a trial by jury in a civil case like this, they depend,
12 absolutely depend on citizens such as yourselves being
13 willing to make the sacrifice, the very real sacrifice that
14 you've each made, and that is important, and that is worthy
15 of note, and it is worthy of appreciation and gratitude.

16 In that regard, I'd like to ask a personal favor of
17 you. Now that I am discharging you as jurors, you're free
18 to leave, but I would like to ask you as a personal favor if
19 you would leave the jury box in just a moment, and go back
20 into the jury room, because I'd like to come into the jury
21 room, and I'd like to shake each one of your hands, and I'd
22 like to look you in your eyes and in person tell you
23 face-to-face thank you for your service. You don't have to
24 do that, but I will not keep you very long, and if you would
25 do that as a personal favor, I would very much appreciate

1 it.

2 Ladies and gentlemen, this completes the trial of
3 this case. This completes your service as jurors in this
4 case. And if you'll meet me in the jury room, I will be
5 there shortly.

6 The jury is discharged.

7 COURT SECURITY OFFICER: All rise.

8 (Jury out.)

9 THE COURT: Counsel, as I noted, the Court accepts
10 the verdict of the jury. That completes the trial of this
11 case, and you are excused.

12 COURT SECURITY OFFICER: All rise.

13 (Court adjourned.)
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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20

2/8/19
Date